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2 UNITED STATES BANKRUPTCY COURT

3 SOUTHERN DISTRICT OF NEW YORK

4 Lead Case No. 05-44481 (RDD)

## 6 | In the Matter of:

7

8 DPH HOLDINGS CORP., et al.,

9

## 10 Reorganized Debtors.

12

13 U.S. Bankruptcy Court

14 | 300 Quarropas Street

15 | White Plains, New York

16

17 | April 23, 2010

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2 1

22 B E F O R E :

23 HON. ROBERT D. DRAIN

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1  
2 HEARING re Thirty-Second Claims Hearing Agenda filed by John  
3 William Butler Jr. on behalf of DPH Holdings Corp., et al.  
4  
5 Sufficiency Hearing Regarding Claims Of Robyn R. Budd As  
6 Objected To On Reorganized Debtors' Forty-Third Omnibus  
7 Objection Pursuant To 11 U.S.C. Section 503(b) And Fed. R.  
8 Bankr. P. 3007 To (I) Expunge Certain Administrative Expense  
9 (A) Severance Claims, (B) Books And Records Claims, (C)  
10 Duplicate Claims, (D) Equity Interests, (E) Prepetition Claims,  
11 (F) Insufficiently Documented Claims, (G) Pension, Benefit, And  
12 OPEB Claims, (H) Workers' Compensation Claims, (II) Modify And  
13 Allow Certain Administrative Expense Severance Claims, And  
14 (III) Allow Certain Administrative Expense Severance Claims  
15 (Docket No. 19356)  
16  
17 Sufficiency Hearing Regarding Claims Of Pamela Geller as  
18 Objected To On The Debtors' Twenty-First Omnibus Objection  
19 Pursuant To 11 U.S.C. Section 502(b) And Fed. R. Bankr. P. 3007  
20 To Certain (A) Duplicate Or Amended Claims, (B) Untimely Equity  
21 Claim, (C) Insufficiently Documented Claims, (D) Claims Not  
22 Reflected On Debtors' Books And Records, (E) Untimely Claims,  
23 And (F) Claims Subject To Modification, Tax Claim Subject To  
24 Modification, And Modified Claims Asserting Reclamation (Docket  
25 No. 9535)

1  
2 Sufficiency Hearing Regarding Claims Of The New York State  
3 Department of Environmental Conservation As Objected To On The  
4 Debtors' (I) Third Omnibus Objection (Substantive) Pursuant To  
5 11 U.S.C. Section 502(b) And Fed. R. Bankr. P. 3007 To Certain  
6 (A) Claims With Insufficient Documentation, (B) Claims  
7 Unsubstantiated By Debtors' Books And Records, And (C) Claims  
8 Subject To Modification And (II) Motion To Estimate Contingent  
9 And Unliquidated Claims Pursuant To 11 U.S.C. Section 502(c)  
10 (Docket No. 5452)

11  
12 Sufficiency Hearing Regarding Claims Of Pasricha Atul As  
13 Objected To On The Debtors' Twenty-First Omnibus Objection  
14 Pursuant To 11 U.S.C. Section 502(b) And Fed. R. Bankr. P. 3007  
15 To Certain (A) Duplicate Or Amended Claims, (B) Untimely Equity  
16 Claim, (C) Insufficiently Documented Claims, (D) Claims Not  
17 Reflected On Debtors' Books And Records, (E) Untimely Claims,  
18 And (F) Claims Subject To Modification, Tax Claim Subject To  
19 Modification, And Modified Claims Asserting Reclamation (Docket  
20 No. 9535)

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2 Sufficiency Hearing Regarding Claims Of Ronald E. Jorgensen As  
3 Objected To On The Debtors' (I) Third Omnibus Objection  
4 (Substantive) Pursuant To 11 U.S.C. Section 502(b) And Fed. R.  
5 Bankr. P. 3007 To Certain (A) Claims With Insufficient  
6 Documentation, (B) Claims Unsubstantiated By Debtors' Books And  
7 Records, And (C) Claims Subject To Modification And (II) Motion  
8 To Estimate Contingent And Unliquidated Claims Pursuant To 11  
9 U.S.C. Section 502(c) (Docket No. 5452)

10  
11 Sufficiency Hearing Regarding Claims Of Jeffrey A. Miller As  
12 Objected To On The Reorganized Debtors' Thirty- Sixth Omnibus  
13 Objection Pursuant To 11 U.S.C. Section 502(b) And Fed. R.  
14 Bankr. P. 3007 To (I) Modify And Allow Claim And (II) Expunge  
15 Certain (A) Duplicate SERP Claims, (B) Books And Records  
16 Claims, (C) Untimely Claims, And (D) Pension, Benefit, And OPEB  
17 Claims (Docket No. 18983)

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19 Sufficiency Hearing Regarding Claims Of Stanley D. Smith As  
20 Objected To On Debtors' Thirty-Seventh Omnibus Objection  
21 Pursuant To 11 U.S.C. Section 502(B) And Fed. R. Bankr. P. 3007  
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23 Interests, (III) Books And Records Claims, (IV) Untimely  
24 Claims, (V) Paid Severance Claims, (VI) Pension, Benefit, And  
25 OPEB Claims, And (VII) Duplicate Claims (Docket No. 18984)

1  
2 Sufficiency Hearing Regarding Claims Of James A. Luecke As  
3 Objected To On Debtors' Thirty-Seventh Omnibus Objection  
4 Pursuant To 11 U.S.C. Section 502(B) And Fed. R. Bankr. P. 3007  
5 To Expunge Certain (I) Prepetition Claims, (II) Equity  
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8 OPEB Claims, And (VII) Duplicate Claims (Docket No. 18984) and  
9 Reorganized Debtors' Forty-Fifth Omnibus Objection Pursuant To  
10 11 U.S.C. Section 503(b) And Fed. R. Bankr. P. 3007 To (I)  
11 Expunge Certain Administrative Expense (A) Severance Claims,  
12 (B) Books And Records Claims, (C) Duplicate Claims, (D) Pension  
13 And Benefit Claims, And (E) Transferred Workers' Compensation  
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20 Pursuant To 11 U.S.C. Section 502(B) And Fed. R. Bankr. P. 3007  
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23 Claims, (V) Paid Severance Claims, (VI) Pension, Benefit, And  
24 OPEB Claims, And (VII) Duplicate Claims (Docket No. 18984)

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1  
2 Sufficiency Hearing Regarding Claims Of Walter A. Kunka As  
3 Objected To On Debtors' Thirty-Seventh Omnibus Objection  
4 Pursuant To 11 U.S.C. Section 502(B) And Fed. R. Bankr. P. 3007  
5 To Expunge Certain (I) Prepetition Claims, (II) Equity  
6 Interests, (III) Books And Records Claims, (IV) Untimely  
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8 OPEB Claims, And (VII) Duplicate Claims (Docket No. 18984)  
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10 Sufficiency Hearing Regarding Claims Of Gary L. Cook As  
11 Objected To On Reorganized Debtors' Thirty-Ninth Omnibus  
12 Objection Pursuant To 11 U.S.C. Section 503(b) And Fed. R.  
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15 Transferred To GM Buyers, And (III) Severance Claims (Docket  
16 No. 19045) and Reorganized Debtors' Forty-Sixth Omnibus  
17 Objection Pursuant to 11 U.S.C. Section 503(b) and Fed. R.  
18 Bankr. P. 3007 to (I) Disallow and Expunge Certain  
19 Administrative Expense (A) Books and Records Claims, (B)  
20 Methode Electronics Claims, (C) State Workers' Compensation  
21 Claims, (D) Duplicate State Workers' Compensation Claims, (E)  
22 Workers' Compensation Claims, (F) Transferred Workers'  
23 Compensation Claims, (G) Tax Claims, (H) Duplicate Insurance  
24 Claims, and (I) Severance Claims, (II) Disallow and Expunge (A)  
25 a Certain Duplicate Workers' Compensation Claim, (B) a Certain

1 Duplicate Tax Claim, and (C) a Certain Duplicate Severance  
2 Claim, (III) Modify Certain Administrative Expense (A) State  
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7 Sufficiency Hearing Regarding Claims Of Sharyl Y. Carter As  
8 Objected To On Reorganized Debtors' Forty-Fifth Omnibus  
9 Objection Pursuant To 11 U.S.C. Section 503(b) And Fed. R.  
10 Bankr. P. 3007 To (I) Expunge Certain Administrative Expense  
11 (A) Severance Claims, (B) Books And Records Claims, (C)  
12 Duplicate Claims, (D) Pension And Benefit Claims, And (E)  
13 Transferred Workers' Compensation Claims, (II) Modify And Allow  
14 Certain Administrative Expense Severance Claims, And (III)  
15 Allow Certain Administrative Expense Claims (Docket No. 19423)

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1 P R O C E E D I N G S

2 THE COURT: Okay, In re DPH Holdings.

3 MR. LYONS: Good morning Your Honor. John Lyons on  
4 behalf of the reorganized debtors.

5 THE COURT: Now you see what happens on nonomnibus  
6 days.

7 MR. LYONS: Your Honor, it's -- it was very  
8 illuminating to see Your Honor at work.

9 Your Honor, I have here with me in court Mr. Denon Rue  
10 (ph.), who, as you know, is the claims administrator, who's  
11 back from Europe, good to know; Mark Castor (ph.), who's the  
12 environmental consultant for DPH; and then I have my partner  
13 Kenneth Berlin who's going to handle the New York environmental  
14 matter; and also Louis Chiappetta, who you saw yesterday; and  
15 Elizabeth Malone, another one of my colleagues.

16 THE COURT: Okay.

17 MR. LYONS: Your Honor, why don't I turn to the  
18 agenda. This is the thirty-second claims hearing. And we're  
19 now at the point, Your Honor, we've actually filed our last  
20 omnibus objection to claims, so I guess that is a hallmark -- a  
21 landmark in the case, and now we have to get through about  
22 another 700 claims or so before we're done with the last claim.

23 THE COURT: Okay.

24 MR. LYONS: But that's from a total of over 18,000.

25 THE COURT: And, I'm sorry, and the 700 are the ones

1           that are contested, or are they --

2           MR. LYONS: That are adjourned in the procedures. Two  
3           hundred are --

4           THE COURT: Right.

5           MR. LYONS: -- approximately 200 are pre-petition and  
6           500 are administrative. So we're --

7           THE COURT: Okay.

8           MR. LYONS: -- we're moving through those claims.

9           THE COURT: You're working through them.

10          MR. LYONS: Your Honor, I'll turn to the agenda. We  
11          could skip over the first twenty-one matters which are just  
12          continued or settled, and we have been, as you know, submitting  
13          stipulations to Your Honor for entry.

14          So if we turn to item number 22, that is now  
15          uncontested; that's the claim of Robin Budd. Ms. Budd  
16          confirmed to us that her claim for severance was paid in due  
17          course, and we have an e-mail to that effect. So we'll submit  
18          an order expunging that claim.

19          THE COURT: Okay.

20          MR. LYONS: Item number 23 on the agenda is the claim  
21          of Ms. Pamela Geller. Your Honor, that one is also resolved.  
22          Ms. Geller just wanted a proviso in the order that it's subject  
23          to her rights under the insurance defense costs order.

24          THE COURT: All right.

25          MR. LYONS: And we're fine with that.

1                   THE COURT: I know you'd already agreed to that, so  
2                   that's fine.

3                   MR. LYONS: And now to the contested matters, Your  
4                   Honor. The first matter, which is probably -- will require the  
5                   most argument, is item number 24, and that's the claim of the  
6                   New York State Department of Environmental Conservation. So  
7                   I'll turn the podium over to Mr. Berlin.

8                   MR. BERLIN: Thank you, and good morning, Your Honor.  
9                   As this Court knows from taking a look at the briefs, in this  
10                  motion debtor seeks to disallow the claim of the New York State  
11                  Department of Environmental Conservation, the New York DEC, on  
12                  the ground that its claims relating to environmental cleanup  
13                  are contingent claims because GM, in the plan modification  
14                  order, agreed to take full responsibility for cleanup at the  
15                  two New York sites that are involved in this case. GM is  
16                  contesting. It's GM's view that they took only partial  
17                  liability of the cleanup at those sites going forward.

18                  And I thought it might be helpful to start out by  
19                  trying to put this -- the provision in the plan modification  
20                  order in the context of how it was developed and therefore to  
21                  get a better understanding of what we were trying to do in that  
22                  order.

23                  In the MD&A (sic), General Motors and Delphi agreed  
24                  that General Motors would not be assuming any of the  
25                  environmental liabilities of Delphi as a result of the

1 transaction, which took place in many states, but GM never took  
2 the position that it was not taking some environmental  
3 liabilities. Even though it was not assuming the liabilities  
4 of the debtor, under Superfund and other statutes, as the new  
5 owner of property there are certain liabilities that are picked  
6 up as the new owner of the property. And GM never contested  
7 that. And in one of the e-mails that GM attached to their  
8 reply motion, they specifically state in the e-mail that they  
9 understand that they have that liability going forward. In  
10 that same e-mail, they also said that they were not -- they  
11 wanted us to confirm they were not being treated as a successor  
12 to Delphi. We never really understood why they were making  
13 that argument, because we didn't see any grounds to ever  
14 consider them a successor. And we sent an e-mail back  
15 confirming that in fact they were not the successor.

16 But these e-mails and this understanding was pre- the  
17 filing, essentially -- well, it was pre-resolution of the -- of  
18 an objection by the New York DEC objecting to the plan of  
19 reorganization on the ground that GM should be fully  
20 responsible for the cleanup liabilities going forward. And the  
21 e-mails you have were done in the context of our discussing  
22 with GM an evidentiary hearing that we have to have during the  
23 plan confirmation to try and resolve the New York -- or to  
24 object to the New York DEC claim.

25 We never got to that because we then negotiated -- we

1 and General Motors negotiated with the New York DEC a  
2 resolution of the New York DEC claim as well as a similar  
3 negotiation took place with the state of Maryland -- state of  
4 Michigan, I'm sorry, to resolve similar claims on the state of  
5 Michigan.

6 And the result of that negotiation was a provision  
7 added to the plan modification order that basically said that  
8 GM was taking full responsibility for cleanup at that site. It  
9 states "GM acknowledges that it shall be responsible for  
10 conducting investigation and remediation of the Rochester  
11 facility and the Lockport facility in accordance with  
12 environmental law."

13 Now, again, GM had agreed going into this before we  
14 even got into the litigation -- GM had taken the view that they  
15 had liability as a buyer, as a new owner of the facility. The  
16 whole purpose of the negotiation was to expand that liability.  
17 But GM's essential argument now is that their only liability is  
18 a liability they have as the owner of the facility, despite the  
19 language I just read. They're saying the liability they got is  
20 a liability as a buyer taking over a facility going forward.

21 And as I said, that -- if you take that position, this  
22 provision in the plan modification order has no effect. All  
23 it's doing is confirming the original position of GM and  
24 Delphi, and that was not what any of the parties intended here.  
25 And it's also shown, I think, pretty clearly, Your Honor, by

1           the language in paragraph 63 of the plan confirmation order,  
2           because that par -- the first paragraph of that says that  
3           anybody who purchased these facilities remains liable under  
4           environmental laws for whatever liability it has as a result of  
5           buying the facility. That's a provision that Your Honor may  
6           have seen that the Department of Justice in all the cases I've  
7           worked on insists goes in every agreement -- every sale  
8           agreement, to make clear that, even though a buyer is not  
9           assuming liabilities, the order doesn't mean that the buyer is  
10          released from --

11                 THE COURT: Relieved of liabilities as a buyer.

12                 MR. BERLIN: Right. Right. So that's why that's in.  
13                 But then we added in a second paragraph in paragraph 63 that  
14                 dealt specifically with the New York sites, and the other  
15                 paragraph dealt with the Michigan sites, in which we said that  
16                 in those sites GM is taking over the liability for those sites  
17                 going forward.

18                 So if you accept GM's position that all they're doing  
19                 is taking on the liability of a buyer, that next paragraph has  
20                 no meaning at all; it's a surplus paragraph that has no effect  
21                 going forward. And that's not how you would normally read two  
22                 paragraphs together, and it's not what the parties intended in  
23                 this agreement.

24                 That -- GM then goes on and argues that, well, if you  
25                 interpret it this way that we are picking up full liability,

1           that's inconsistent with the MD&A agreement in which we didn't  
2           assume any liabilities. But the whole point of this, Your  
3           Honor, was that we were coming in and we were now negotiating  
4           something different from the MD&A agreement. We were -- that  
5           basically superseded the MD&A agreement and said, with regard  
6           to the New York and Michigan sites, not the other sites  
7           involving the transaction, just these sites, with regard to  
8           those sites, GM was taking on the liability going forward.

9           And the plan modification order recognizes clearly  
10          that there may be conflicts between the MD&A and the plan  
11          modification order. It's got a provision in paragraph 3 that  
12          explains how those conflicts are going to be resolved. And in  
13          the case of paragraph 63, it says, notwithstanding any of the  
14          provisions of the MD&A and this order, paragraph 63 of the  
15          order shall govern the provisions of the master disposition  
16          agreement. So we were clearly displacing that, and the  
17          language on nonassumability in the MD&A agreement just has no  
18          remaining impact on that.

19           GM then says -- if you take a look and parse through  
20          the language of paragraph 63, paragraph 63 says -- starts off  
21          by saying the buyer of the facility acknowledged its liability  
22          under environmental laws. Well, we agree; that's what they're  
23          doing. We weren't saying that the only liability they had was  
24          as a buyer of the facility, though. And that -- again, that  
25          was the whole purpose of the paragraph.

1               They also say that the language in the paragraph  
2               includes reference to something called site codes -- called  
3               site codes under New York law. We have Eugene Leff from the  
4               New York Attorney General's Office here today and he may talk  
5               about that a little more. What the site codes do is they  
6               identify the source of the contamination. They don't in any  
7               way explain the extent of the cleanup that's required. This  
8               whole debate here is about what cleanup is required. So,  
9               basically what this says is these are the sources. It doesn't  
10               say what clean up is required. And the normal course of any  
11               kind of cleanup when you identify a source (sic) code is to  
12               clean up the contamination. It's not just in the area of the  
13               source code; whatever cleanup is required going forward. And  
14               Mr. Leff will talk about that a little bit more in a minute.

15               We also -- Your Honor, it's, I think, relevant here;  
16               the -- GM is basically saying that under this agreement it's  
17               only responsible for about fifteen percent of the contamination  
18               at these two facilities. Yet in the documents, in the  
19               agreements, Delphi agreed to transfer all of the documents  
20               relating to these sites to General Motors. They did not keep  
21               any documents going forward. And, obviously, if there had been  
22               any liability left in the hands of Delphi for this  
23               contamination that's not being covered by GM, then Delphi would  
24               have kept the documents and would have needed the documents to  
25               deal with those issues going forward.

1                   Finally, Your Honor, only one last issue on this is  
2                   that there's a lot of discussion in the brief about GM's  
3                   liability under the New York Brownfield statute for cleanup.  
4                   We talk a little about other statutes under which GM may be  
5                   liable. But the fundamental fact here is that if GM took over  
6                   all the liability at these facilities, those issues all go  
7                   away, because there's no dispute that if GM is the owner --  
8                   is -- I'm sorry, is responsible for all liability of these  
9                   facilities, then under the Brownfield statute it would be a  
10                  participant, because the Brownfield statute covers anybody  
11                  who's got legal liability at the facility; that comes -- that  
12                  goes beyond just being the owner of the facility. There's no  
13                  doubt they'd be liable under other statutes out there also.

14                  So by resolving the question of whether GM took over  
15                  full liability at these facilities, all those issues go away.  
16                  GM and New York DEC can go out, they can have their dispute  
17                  over how much cleanup needs to be done at these properties  
18                  going forward, but that would not be an issue for this Court.  
19                  It's not an issue for Delphi. So if you can resolve this, we  
20                  can -- we -- if it's resolved in the way we're saying, GM would  
21                  have full responsibility, there'd be no liability left to  
22                  Delphi, and the New York DEC claim would be a contingent claim.

23                  Thank you, Your Honor.

24                  THE COURT: Well, let me ask you. You referenced a  
25                  couple e-mails that were attached to GM's last pleading. I

1 take it, though, that you are basing the debtors' argument on  
2 the plain language in the context of the order and not looking  
3 to rely on anything about the negotiations that led to this  
4 language.

5 MR. BERLIN: No, that's correct, it's the context and  
6 the plain language. I just referenced those just to make it  
7 clear that they were written at the time that GM and Delphi  
8 were arguing that they -- that GM had not assumed these  
9 liabilities, and then subsequently we negotiated the agreement  
10 and that changed the -- how the -- how this would all be  
11 enforced.

12 THE COURT: Okay. And then I'm not sure if this is a  
13 question for you or maybe for each of the New York -- for each  
14 of the parties here, i.e., NYDEC and GM, as well as Delphi. In  
15 the DEC's response to the objection, it particularizes in a  
16 little more detail the elements of its two proofs of claim;  
17 this is at paragraphs 11 through 14 of its response. And this  
18 isn't the last response; this was the one that was filed on  
19 November -- at the end of November, November 21st. And it --  
20 on the Rochester site it lists: roughly 2 million dollars for  
21 removal of approximately 20,000 tons of contaminated soil;  
22 850,000 dollars for installation of a 5 multiphase extraction  
23 system -- or 5 multiphase extraction systems; 100,000 dollars  
24 for an additional nonaqueous phase liquidation system; 100,000  
25 dollars for existing fractured bedrock groundwater collection

1 system; payments for engineering services on the foregoing; and  
2 annual operation, maintenance and monitoring costs of  
3 approximately 496,000 dollars over 30 years, and another  
4 estimated future administrative cost of 140,900 dollars.

5 My question is, on Rochester, are all of these things  
6 expenses that GM says it's not liable for, or only just some of  
7 them?

8 MR. BERLIN: I think at Roch -- as I understand it,  
9 Your Honor, and GM can confirm this, at Rochester the  
10 cleanup -- the evaluation of cleanup is almost complete, and  
11 the cleanup is all taking place on the Rochester facility.

12 THE COURT: Right.

13 MR. BERLIN: Therefore, I think GM is saying on  
14 Rochester it has liability for the cleanup.

15 THE COURT: It seemed to me from GM's response that  
16 what they're arguing about is offsite responsibility.

17 MR. BERLIN: Yes, they're only -- they're arguing  
18 about offsite -- potentially, theoretically, if there were  
19 other sources discovered onsite, I guess, but certainly offsite  
20 is the primary argument.

21 THE COURT: So as far as the actual claim filed on  
22 Rochester, it wasn't clear to me that there was any real  
23 dispute here.

24 MR. BERLIN: I don't think there's any dispute on  
25 Rochester; I think it's Lockport.

1                   THE COURT: Okay. And on Lockport, it's down to, I  
2 think, 255,000 for unliquidated future remedial costs? Is that  
3 it?

4                   MR. BERLIN: No, I -- because I think at Lockport --  
5 what's happening at Lockport is there is evidence of offsite  
6 contamination adjacent to the property.

7                   THE COURT: Right.

8                   MR. BERLIN: There might still -- it's not been fully  
9 delineated yet, so it's not entirely clear whether it's -- it  
10 would be GM's liability or another party's liability, assuming  
11 they have full liability for the site. So that's something  
12 they would negotiate with New York DEC --

13                  THE COURT: But does --

14                  MR. BERLIN: -- whether they are responsible for it.  
15                  But --

16                  THE COURT: But does the -- I mean, the proof of claim  
17 was for 405,000 dollars. All right, there was a specific  
18 dollar amount. Did they res -- what -- I'm just wondering  
19 whether we're fighting about something that's not really in the  
20 proof of claim at this point.

21                  MR. LEFF: May I did address that, Your Honor?

22                  THE COURT: I thought it might be a question for you  
23 as opposed to the debtors, but --

24                  MR. LEFF: I'm Eugene Leff for the State of New York  
25 DEC.

1 THE COURT: Right.

2 MR. LEFF: The proofs of claims had two elements:  
3 past costs which were -- was a dischargeable claim; and an  
4 administrative claim at each site for undetermined future  
5 costs.

6 THE COURT: Okay.

7 MR. LEFF: There is no direct specific answer to your  
8 initial questions.

9 THE COURT: Because you're still looking.

10 MR. LEFF: Exactly. And the -- one of the issues at  
11 stake today is whether it's GM Components that it will conduct  
12 the investigation to get the answer to your questions.

13 THE COURT: Okay. Does that apply also to Rochester?  
14 Is there an issue --

15 MR. LEFF: Yes, it does.

16 THE COURT: -- about offsite for Rochester also?

17 MR. LEFF: Yes, there is. We submitted two  
18 affidavits: one by an engineer for the Rochester site; the  
19 other from the Lockport site. And both gentlemen stated in the  
20 affidavits that there were continuing investigations of  
21 migration off the property, and in fact there was reason to  
22 believe that the contamination offsite was characteristic of  
23 the contamination onsite, that there was a match.

24 THE COURT: Okay. So is it fair to say that, with  
25 regard to the liquidated amounts on the proof of claim, there's

1 really no dispute; GM accepts those as an owner, not as a --

2 MR. LEFF: With respect --

3 THE COURT: -- not as a -- not under the order, the

4 Court's order, but as an owner, as a buyer, they accept those?

5 But it's as to the unliquidated offsite amounts that we're

6 having a dispute, right?

7 MR. LEFF: If I understand the terminology, the

8 specific past cost claims will be resolved with the debtor in

9 this proceeding. General Motors Components agreed to a portion

10 of the administrative claim that we cannot be precisely

11 quantified. The onsite cleanup they concede today, but we say

12 the order --

13 THE COURT: Right. No --

14 MR. LEFF: -- entails the offsite as well.

15 THE COURT: Right. No, I understand that. I'm just

16 trying to --

17 MR. BERLIN: And, Your Honor, we of course don't

18 necessarily agree these were administrative claims. These are

19 claims resulting from pre-bankruptcy releases, so we would not

20 call them administrative claims. But whatever category they

21 fit in, it's our view that GM should be responsible for it.

22 THE COURT: Right. Okay. Okay.

23 MR. BERLIN: Okay, thank you, Your Honor.

24 THE COURT: Sure.

25 MR. LEFF: May I add a few remarks, Your Honor?

1 THE COURT: Yeah.

2 MR. LEFF: The initial issue today is whether the  
3 debtors' motion to disallow the claims should be granted on the  
4 ground that GM Components has fully accepted and will in fact  
5 clean up the two properties. It's entirely clear now, based on  
6 the pleadings submitted by GM Components, that there is no  
7 assurance that they will comply with the Court's modification  
8 order.

9 The second issue -- and therefore that motion to  
10 disallow should be denied.

11 The second issue is what does the Court's modification  
12 order mean. We can -- we submit that the order is a binding  
13 commitment which makes General Motors Components responsible  
14 for both investigation and remediation of both sites. The  
15 extent of that -- those obligations must be determined in  
16 accordance with state law, and we do not -- and I don't  
17 understand any of the parties to be asking Your Honor to  
18 determine today what the extent under state law is. However,  
19 the order clearly -- and here is the language, the plain  
20 language, of the provision -- makes General Motors Components  
21 responsible for the hazardous substances related to these  
22 sites.

23 General Motors Components, however, argues that it has  
24 made no commitment here in one portion of its papers. All this  
25 is -- this provision is, is a representation that it owns the

1 site. We know that that's not the case, because an owner is  
2 only potentially liable under federal and state law. An owner  
3 could, for example, have a defense that it's Delphi's fault  
4 that it as a third party, in the terminology of the CERCLA  
5 statute, for example, is solely responsible for the  
6 contamination.

7 What we achieved in negotiating this provision is  
8 that -- is the abandonment by GM Components of any defense,  
9 whether it's the third-party defense, the apportionment  
10 argument that only a small percentage of liability should apply  
11 to the owner. All of these are gone because they committed --  
12 and this is language they accepted in paragraph 39 of their  
13 April 13th statement -- they committed to be responsible.

14 They rely on e-mails which they claim show that  
15 offsite migration was given up. For one thing, the e-mail they  
16 presented to the Court was never sent to the state. You can  
17 tell from the copyees and the addressees that I'm not listed,  
18 and no other attorney or a party for the state is listed.

19 They say that we asked for an assumption of Delphi's  
20 liability and we compromised or abandoned that demand. The  
21 fact is our prayer in the objection that we filed was very  
22 clear in asking that the order obligate General Motors  
23 Components to do the remediation and investigation. We didn't  
24 look for any particular form of legal transaction, like an  
25 assumption or assignment of obligations or liabilities, from

1       Delphi to GM Components. We were only concerned with the legal  
2       result; that is, that under your order GM Components should be  
3       responsible for the investigation and remediation. They agreed  
4       to do precisely that. And when we used the word "assume", we  
5       meant it in the sense of accept, and they did accept that  
6       liability.

7                  With respect to site codes that Mr. Berlin referred  
8       to, it is a bureaucratic practice to identify contaminated  
9       areas by site code. There's absolutely no legal significance  
10      in determining the obligation to clean up and the extent  
11      geographically of that cleanup or investigation in the site  
12      code itself. Every property that is processed by DEC is  
13      assigned this simply for identification. And, in fact, the  
14      modification order says that the properties in question here  
15      are identified by their name and site code. That's all that  
16      means.

17                  The extent of the cleanup and investigation is  
18      determined by state law. Under the regulations, every owner of  
19      contaminated property, in any of our programs, has some  
20      obligation for offsite contamination. The obligation varies  
21      depending on the circumstances, whether that part -- that owner  
22      is in the Brownfields (sic) program, whether that owner was the  
23      owner at the time of contamination, and so on. Those are  
24      issues that can be resolved either through the Brownfields  
25      application process or in a state proceeding that may follow

1 the DEC's determination of the application.

2 In conclusion, we believe it's plain that --

3 THE COURT: Well, if that's the case, why did you need  
4 this?

5 MR. LEFF: We needed -- we -- it is possible for the  
6 current owner to take the position that it is only responsible  
7 for onsite contamination plus a qualitative exposure assessment  
8 form of investigation for offsite. We wanted full  
9 responsibility, and that's what we sought in the negotiation  
10 and believed that we obtained.

11 THE COURT: Okay. On the issue of the site codes --

12 MR. LEFF: Yes, sir.

13 THE COURT: -- do -- are you telling me that in the  
14 DEC's records you don't identify sites by their general name or  
15 address but by these site codes?

16 MR. LEFF: All three are used.

17 THE COURT: Okay. So what is the relevance of the  
18 site codes, then?

19 MR. LEFF: Very little. We were very surprised to the  
20 see the argument raised by General Motors Components. What  
21 they were suggesting is that the site code creates a regime for  
22 cleaning up sites that is like a donut where you remove the  
23 contamination in the middle, and anything outside the parcel  
24 that's identified by the site code is left in place, any  
25 contamination.

1                   THE COURT: Right. Well, what does the site code --  
2 what does it signify?

3                   MR. LEFF: It's simply a method to -- like a civil  
4 action number for a case, to quickly retrieve information about  
5 the thing referred to.

6                   THE COURT: Why is it opened?

7                   MR. LEFF: It's opened to facilitate retrieval of  
8 information.

9                   THE COURT: But it doesn't start -- I mean, I'm just  
10 picking up on what you just said. It doesn't start a  
11 proceeding? It doesn't start a chain of events happening with  
12 respect to that particular space?

13                  MR. LEFF: It is something that happens at the time  
14 that a proceeding, not necessarily an enforcement proceeding  
15 but a process, begins. But the code itself, like the civil  
16 action number, doesn't constitute the beginning of a  
17 litigation; it's something that occurs for convenience's sake  
18 when the process began -- begins.

19                  THE COURT: Okay, so what you're telling me is that a  
20 site code doesn't prescribe the limits of DEC action or rights?

21                  MR. LEFF: Absolutely.

22                  THE COURT: The acknowledgment here in the last clause  
23 in paragraphs 63(2) says -- acknowledges that it shall be  
24 responsible for conducting investigation and remediation at the  
25 two facilities. I don't -- those two words, "investigation"

1 and "remediation", don't seem to me to be terms of art. I  
2 mean, I know what they generally mean, but am I missing  
3 something there? Does remediation automatically mean offsite  
4 or onsite, or does -- I mean, what does --

5 MR. LEFF: Remediation --

6 THE COURT: Is there any term of art that I should  
7 read into that word?

8 MR. LEFF: Remediation means to eliminate the threat  
9 to the public health and the environment posed by all  
10 contamination at the -- related to the property in question.

11 THE COURT: So you're saying it has a broad  
12 interpretation; it's not a limited --

13 MR. LEFF: It certainly does --

14 THE COURT: -- term of art?

15 MR. LEFF: -- because the regulations define what  
16 remediation is required for a site, and that always entails  
17 eliminating the threat, wherever it may be, that is  
18 attributable to that site.

19 (Pause)

20 THE COURT: Okay. I'm going to ask you the same  
21 question I asked the counsel for DPH, which is, you're relying  
22 here on the plain language and the context, right? You're not  
23 offering up to me actual negotiations that occurred over this  
24 language?

25 MR. LEFF: I'm prepared to do so, to offer up a part

1 of the negotiations, but it's really unnecessary.

2 THE COURT: Okay. All right.

3 MR. LEFF: Thank you, Your Honor.

4 THE COURT: Okay.

5 (Pause)

6 THE COURT: Oh, I'm sorry, and you could stay there.

7 I did have a --

8 UNIDENTIFIED SPEAKER: Well, I've already --

9 THE COURT: You're still -- I mean, you made the  
10 point, which is a good one, that you're not really asking me to  
11 specify what clearly falls within GM's responsibility as an  
12 owner and what would be extraneous that might be picked up by  
13 this language in the order, and I take it that's because you  
14 want GM, which is an ongoing viable company, to take the  
15 laboring oar in dealing with this site; you don't particularly  
16 want DPH to do it, which is, you know, a shell at this point.

17 So how would -- I think I know the answer to this, but  
18 as far as the claim objection is concerned, is it fair to say  
19 that you're seeking the denial of the claim objection but at  
20 the same time you are not at this point seeking to collect any  
21 money from DPH?

22 MR. LEFF: That's correct, but it's a very important  
23 point to us that DPH remain liable. They are jointly liable  
24 with GM Components --

25 THE COURT: Right.

1 MR. LEFF: -- and if for any reason -- I don't know  
2 what's going to happen to the automobile market.

3 THE COURT: Right.

4 MR. LEFF: It would --

5 THE COURT: Or if some court somewhere says that GM  
6 doesn't have to perform, then you want to be able to --

7 MR. LEFF: Precisely.

8 THE COURT: -- assert the claim against the debtor?

9 Okay.

10 MR. HIRD: Good morning, Your Honor. My name is David  
11 Hird, from the law firm of Weil, Gotshal & Manges, and we're  
12 representing General Motors Components, or GM Components.

13 GM did -- or Components did not assume any liability  
14 or any responsibility. What G -- what Components did is affirm  
15 that as the new buyer it had certain obligations under law.  
16 And this is clearly stated in the language, which refers to GM  
17 Components, as buyer, acknowledging certain specific  
18 representations.

19 The state had asserted that G -- it wanted GM to -- or  
20 Components to assume the obligations of the debtors and we did  
21 not. And the e-mail traffic that we've shown has made it clear  
22 that it was not our intention.

23 But the most important thing in order to understand  
24 how this happened is to look at it in the concept of the  
25 General Motors Corporation's own bankruptcy proceeding that was

1 going on at about the same time where the new GM was attempting  
2 to purchase old -- assets from the old GM through the  
3 bankruptcy proceeding, through a 363 sale. And New York State  
4 came in and made the same argument that it had raised in its  
5 objection before this Court: You can't do that without  
6 stepping in the shoes and becoming -- and taking on all of the  
7 responsibility of the old company.

8 We had argued that issue before Judge Gerber and had  
9 prevailed, and the state knew it. There are several pages in  
10 Judge Gerber's opinion that talks about why the state's  
11 argument does not succeed but recognizes that a purchaser of  
12 property may have other obligations imposed by law.

13 When we received the proposal, which was drafted by  
14 Mr. Leff I believe, we saw "acknowledge as a buyer", and we saw  
15 that being consistent with the distinction that Judge Gerber  
16 had drawn in his own opinion. And we were fully prepared to  
17 accept that language, because it's simply stated, but it is.  
18 We own the facility now; as a buyer, we have certain things we  
19 will do.

20 We are doing, with respect to the Lockport property --  
21 I'm going to talk about each of these facilities separately, if  
22 I may. With regards to the Lockport property, we're doing all  
23 environmental investigation and remediation which needs to  
24 happen on the property. And that was the reference to the site  
25 code which we made in our brief. It was not -- it was the

1 point that DEC had looked at the property and evaluated the  
2 issue and had identified certain sources of contamination, and  
3 we were addressing each of those sources of contamination. We  
4 pointed out that they amounted to fifteen percent of the land  
5 area, not because we were saying we're not going to deal with  
6 the land area; it's because the rest of the land area didn't  
7 have contamination. We were dealing with all of those.

8 The real importance of the site codes, which we  
9 mention, is the language we included in it, from the database  
10 that came out, that in each instance the DEC had determined at  
11 the time we acquired it that there wasn't an offsite  
12 responsibility involved with each of these issues. And we  
13 understood that when we went in. We were taking five specific  
14 onsite remediation projects because those were the only five on  
15 the site and there were no offsite.

16 Subsequently in March of this year, apparently the DEC  
17 has found some offsite contamination which it speculates may be  
18 from the Lockport facility. And it doesn't necessarily say  
19 it's from any of these site codes. It may be from operations  
20 which ceased many years ago. That is not something that we  
21 took -- that was not -- that is not remediation at the  
22 facility, because that is off the facility. That is not  
23 remediation under the site codes. That is not something  
24 that --

25 THE COURT: Well, let me make sure I --

1 MR. HIRD: -- we are responsible for.

2 THE COURT: Maybe I missed this. With regard to the  
3 specific site codes --

4 MR. LEFF: Yes.

5 THE COURT: -- are you saying that, if it turns out  
6 that the offsite contamination comes ultimately from that site  
7 code area, that GM did undertake to do that, to remediate that?

8 MR. HIRD: What we said is that with respect -- let's  
9 pick a site code, one which involved Building 7. If the  
10 specific contamination identified in Building 7, with specific  
11 contaminants, was continuing to go offsite, we would stop it  
12 and deal with that and deal with stuff that is ongoing as it  
13 goes offsite.

14 THE COURT: But not what had happened before the sale?

15 MR. HIRD: Not what had happened years before,  
16 particularly if you don't have a continuous plume or anything  
17 that does adjust the fact that gee, these constituents look  
18 similar to the constituents that were on that property, so  
19 maybe they must have come through.

20 THE COURT: But as an owner wouldn't you have to stop  
21 at any place that you owned the --

22 MR. HIRD: If it was on a continuous ongoing release,  
23 we would.

24 THE COURT: Right. So why would you reference the  
25 site codes?

1 MR. HIRD: Because what we -- first of all, the site  
2 codes were proposed by the state and we accepted them. The  
3 reason why we reference the site codes is to point out to Your  
4 Honor that we looked at the specific issues we were asked to  
5 acknowledge. And at the time we acknowledged, it was very  
6 clear in the state's database there was no offsite liability  
7 associated with them, because, if you read the printouts that  
8 we attached as Exhibits A through E, they say we've done  
9 offsite monitoring and there's nothing there. One of the site  
10 codes says the only thing that is contaminated is soil.

11 Now, we were not the people who proposed the site  
12 codes; they came from the state. But we looked at it when we  
13 made the decision to accept this language, and those site codes  
14 dealt specifically with contamination -- contaminated areas  
15 that were onsite and had no offsite impact.

16 The state has made clear that under its law a new  
17 buyer does not acquire offsite li -- responsibilities  
18 acceptance. They say in certain limited situations we're happy  
19 to litigate that. But that's not what Mr. Leff is arguing  
20 here. What Mr. Leff is arguing: We can't rely on limitations  
21 that we have on the -- as a buyer; we functionally step into  
22 Delphi's shoes. And that's not what we took -- there's no  
23 reason why we would take that with Delphi property when we  
24 wouldn't take that with old GM property.

25 THE COURT: Well, I guess that was the next question I

1 had. Judge Gerber's opinion came out July 5th. The hearing on  
2 this --

3 MR. HIRD: This was order was entered --

4 THE COURT: -- order -- the order was entered July --

5 MR. HIRD: 30th.

6 THE COURT: -- 30th, but the hearing was after July  
7 5th.

8 MR. HIRD: And Mr. Berz's e-mail is completely  
9 understandable, his e-mail of July 19th, in the context of  
10 the -- of Judge Gerber's order of the 5th, because --

11 THE COURT: But --

12 MR. HIRD: -- he talks about the very --

13 THE COURT: -- my question is --

14 MR. HIRD: -- issues that Gerber did.

15 THE COURT: -- why didn't you just cite Judge Gerber's  
16 order to me? Why enter this language?

17 MR. HIRD: Because we thought we were entering  
18 language that simply said we're accepting the idea as a buyer.  
19 We thought that this language essentially paralleled Judge  
20 Gerber's order. It did not use the term "assumed" --

21 THE COURT: What is --

22 MR. HIRD: -- which is what this Court is saying.

23 THE COURT: What is your response to the debtor and  
24 the DEC's argument that under your reading of paragraph 2  
25 you've said this twice? And why do you bother to say it twice,

1 except perhaps to mislead the debtor and DEC and the Court?

2 MR. HIRD: My understanding, and this goes back to the  
3 underlying (sic), is we were comfortable once but -- in saying  
4 it once, but if you look at the first paragraph, it's in the  
5 negative, and we had heard that the state wanted to hear it in  
6 the positive. So we said it once in the positive as a way to  
7 show yes we're acknowledging, as opposed to no we can't have  
8 that. So that -- my understanding is that came from a specific  
9 state request to -- that they didn't like the first paragraph  
10 in the -- to be in the negative and wanted it in the positive,  
11 so that -- because it's -- it functionally said the same thing  
12 but it was more palatable to their management.

13 Your Honor, the --

14 THE COURT: And what is your take of paragraph 3?

15 MR. HIRD: Our take of paragraph 3?

16 THE COURT: Yeah, which says that GM and the DEC shall  
17 confer in good faith to identify the remaining investigation  
18 and remediation required.

19 MR. HIRD: Because there is a remaining  
20 investigation/remediation done on the onsite areas. We're  
21 talking about, in Lockport, a facility that's over 400 acres.

22 THE COURT: Right.

23 MR. HIRD: So there's a lot of investigation and  
24 remediation in order to determine what needs to be done in the  
25 onsite areas.

1                   With respect to the offs -- with respect to Rochester,  
2                   the off -- we were doing -- and we accepted, and we say we  
3                   accept, the operation of a barrier well system, which has the  
4                   effect of drawing pollution back to the property. It's done to  
5                   prevent pollution from leaving the property, but it draws it  
6                   back. That's something we're accepting we're doing.

7                   THE COURT: I guess what I -- I'm having a hard time  
8                   seeing here is the concern that is behind this entire dispute,  
9                   as far as I could tell, which is responsibility for offsite  
10                  cleanup of contamination that was caused before the sale, was  
11                  one that GM was aware of, quite aware of, before this language  
12                  was entered into, and yet it doesn't deal with that issue. It  
13                  doesn't say we're not responsible for that.

14                  MR. HIRD: Yes, it does.

15                  THE COURT: Well --

16                  MR. HIRD: And I can explain --

17                  THE COURT: -- it doesn't say it in so many words,  
18                  that's for sure.

19                  MR. HIRD: It doesn't in so many words. It says "at  
20                  the facilities" and "at the site codes". It referred  
21                  specifically to specific pieces of property. You know, they  
22                  mentioned the addresses are there. The addresses are something  
23                  we're comfortable with, whatever is on those addresses. But  
24                  here they're talking about --

25                  THE COURT: Well, that's a different -- that's a

1 different point, and that -- and that's --

2 MR. HIRD: That's it, and they're talking about  
3 something that is off the property.

4 THE COURT: Well, that's --

5 MR. HIRD: There is nothing here that says anything  
6 about obligations off the property.

7 THE COURT: Well, that's -- that, I think, goes to a  
8 different point, and it's the question I asked counsel for the  
9 DEC. The key phrase here is it "acknowledges that it shall be  
10 responsible for conducting investigation and remediation of the  
11 Rochester facility and the Lockport facility in accordance with  
12 applicable environmental laws".

13 MR. HIRD: And those faci --

14 THE COURT: So it's investigation and remediation of  
15 the two facilities.

16 MR. HIRD: Yes, and those --

17 THE COURT: And --

18 MR. HIRD: -- facilities --

19 THE COURT: Let me just get my question out.

20 MR. HIRD: I'm sorry.

21 THE COURT: My question was, is that language --

22 should I read that language as precluding anything that goes  
23 beyond the borders of those two facilities?

24 MR. HIRD: I think you should for the following

25 reason: The -- let's start with the Lockport facility. It's

1 defined as the address, and we don't have a problem with  
2 address, and it's defined as those five site codes. And all of  
3 those five site codes, when you look --

4 THE COURT: Wait, let's accept for the moment -- you  
5 don't have to agree with me on this, but let's accept for the  
6 moment that it's the address, so that there's a boundary --

7 MR. HIRD: Yes.

8 THE COURT: -- to the facility. Does remediation --  
9 is it limited to what's within the boundary?

10 MR. HIRD: It's limited to what's within the boundary.  
11 And what we would do, because we independently, regardless of  
12 this paragraph, as to the buyer --

13 THE COURT: No, in the future.

14 MR. HIRD: I'm going to say it as a -- if we came  
15 today and we -- the first day we come in we see contamination  
16 moving offsite --

17 THE COURT: No, I understand that point.

18 MR. HIRD: -- then we --

19 THE COURT: But --

20 MR. HIRD: -- we have to deal with that --

21 THE COURT: But --

22 MR. HIRD: -- and we also have to draw up that.

23 THE COURT: But my question's a little different than  
24 that, which is, in common parlance, or common understanding, if  
25 GM got a direction or an order from the DEC that said we direct

1 you to remediate the Lockport facility, would it commonly be  
2 understood to mean that remediation is limited to within the  
3 borders of the facility?

4 MR. HIRD: If it was identified as a specific owned  
5 facility, yes. Sometimes you have --

6 THE COURT: Well, I'm sorry --

7 MR. HIRD: Can I --

8 THE COURT: -- when you say --

9 MR. HIRD: Can I give you the complete answer?

10 THE COURT: I know, I just want -- you can, but I want  
11 to just --

12 MR. HIRD: Oh, I'm sorry.

13 THE COURT: When you say a "specific owned facility",  
14 you're not referring to site codes, though; you're saying that  
15 it's our facility that we own?

16 MR. HIRD: Sometimes some --

17 THE COURT: Some facilities are owned by multiple  
18 parties?

19 MR. HIRD: Sometimes the governments, both federal and  
20 state, give a broader name, which includes multiple  
21 properties --

22 THE COURT: Right.

23 MR. HIRD: -- to properties.

24 THE COURT: Right.

25 MR. HIRD: They might say, you know, Love Canal --

1 THE COURT: Yeah.

2 MR. HIRD: -- and it may be multiples. But other  
3 times they deal with specific facilities. Here, if you look at  
4 the language, the address was -- the phraseology --

5 THE COURT: 200 Upper Mountain, Lockport.

6 MR. HIRD: It has an address. It also had five site  
7 codes, none of which had offsite -- thing. So, from our  
8 perspective, they're saying we want you to take these --  
9 anything that is on the Lockport property. And we said okay,  
10 that's what we have anyway --

11 THE COURT: But beyond your perspective, what I'm --

12 MR. HIRD: Yeah.

13 THE COURT: -- what I'm asking you is, in common  
14 parlance, if you get a directive from New York DEC that says  
15 you are to remediate the 200 Upper Mountain Lockport facility,  
16 which is all owned by GM, it's -- you know, it's the same metes  
17 and bounds that are in the mortgage -- you know, in the real  
18 estate recordation.

19 Are you saying to me that that's understood to mean  
20 you remediate just what's within those boundaries and nothing  
21 else?

22 MR. HIRD: If the facility is defined that way,  
23 sometimes they pick a name that is more general. For  
24 example --

25 THE COURT: No, I understand that point.

1 MR. HIRD: -- if I was given a --

2 THE COURT: No, no, you don't need to go over that  
3 again.

4 MR. HIRD: Okay.

5 THE COURT: All I'm saying is --

6 MR. HIRD: Yes.

7 THE COURT: -- if you get --

8 MR. HIRD: Yes.

9 THE COURT: -- that notice, you understand --

10 MR. HIRD: Yes.

11 THE COURT: -- that you don't have to go --

12 MR. HIRD: Particular --

13 THE COURT: -- and --

14 MR. HIRD: We would --

15 THE COURT: -- find groundwater reaching out into, you  
16 know, 300 --

17 MR. HIRD: We would construe partic --

18 THE COURT: -- Upper Mountain Road --

19 MR. HIRD: -- particularly as a purchaser. As a  
20 purchaser, a volunteer, someone who did it --

21 THE COURT: No, that's not --

22 MR. HIRD: -- we would not understand that.

23 THE COURT: I don't -- I'm just trying to figure out  
24 these words.

25 MR. HIRD: Yeah.

1 THE COURT: You can argue the context in a moment.

2 MR. HIRD: Okay.

3 THE COURT: I'm just trying to figure out these words.

4 Does remediation mean -- is it -- when it says "remediation of  
5 the facility" and the facility's identified and the facility's  
6 wholly owned by you, does it mean the remediation is limited to  
7 what's within the boundaries of that facility and it doesn't  
8 cover, you know, the spillover into another facility?

9 MR. HIRD: It depends on how that specific facility is  
10 defined. If -- I have to go back to what I was saying before.  
11 There are some facilities that are defined with a name that  
12 makes it clear it goes beyond that. A facility defined this  
13 way with a specific address and specific site codes would say  
14 to us, and did say to us, this facility and not beyond it.

15 THE COURT: And that's the case even if it leaves out  
16 the site codes and just says the address?

17 MR. HIRD: That would be us -- that would be the case  
18 if it's the address. The difference for us, and this is where  
19 Rochester's different, we took an understanding, we had an  
20 understanding, we knew, because the site code was added here,  
21 that at Rochester there was some offsite impact but it was  
22 being remediated through onsite activity. We didn't know of  
23 any offsite impact on Lockport. And we took that system, and  
24 we are operating that system, and it has offsite impact.

25 THE COURT: But doesn't that --

1 MR. HIRD: And we're continuing to --

2 THE COURT: -- doesn't that just argue that your  
3 guys -- your clients made a business decision based on the  
4 information they had and took the risk that there might be more  
5 offsite problems?

6 MR. HIRD: No, we relied on the fact that we were  
7 acknowledging the obligation as a buyer and not being asked to  
8 assume. The language that Mr. Leff pooh-poohs here was the  
9 language that was important to us. This was not understood in  
10 any way by our people as a business decision that we were  
11 taking anything more than we would have had as a purchaser, as  
12 we were going to have as a purchaser, of the GM properties. It  
13 was simply, in order to avoid having an argument before Your  
14 Honor, the state wanted to say it in a positive way as opposed  
15 to a negative way, and we agreed to do that.

16 THE COURT: Again, I mean, having won two weeks  
17 before, I'm not sure why you wanted to avoid an argument with  
18 language that at best is ambiguous for you.

19 MR. HIRD: Well, we had --

20 THE COURT: I mean, it's --

21 MR. HIRD: -- we had Mr. Berlin's statement to us  
22 that, you know, nobody's thinking of you as a successor.

23 THE COURT: But that's totally different. That's a  
24 totally different issue. That would make it easier for you to  
25 win in front of me than in front of Judge Gerber.

1 MR. HIRD: We thought that Mr. Leff was understanding  
2 he would lose in front of you and was there for trying to have  
3 a more positive phraseology to sell to his client. And that's  
4 what we did and, quite honestly, that was a mistake.

5 THE COURT: Is there any evidence of that?

6 MR. HIRD: The evidence of that, yeah, I believe, is  
7 in the e-mails from Mr. --

8 THE COURT: But --

9 MR. HIRD: -- Leff where we've heard that Mr. Leff --

10 THE COURT: But he's not a part of that e-mail chain.

11 MR. HIRD: No, there's other e-mails, Your Honor, and  
12 I can field those out for you.

13 THE COURT: Are they in the record?

14 MR. HIRD: They're not in the record at the moment  
15 because I didn't think we needed to get into that until you  
16 asked the question directly.

17 THE COURT: Okay.

18 MR. HIRD: Your Honor, we do agree with the state that  
19 you don't have to determine the outer limits of what we took as  
20 a buyer or what we're responsible for as a buyer. But the  
21 point is we didn't expand that responsibility, that we may be  
22 responsible for what Mr. Leff says may be out there, we may  
23 not; that's for another Court to decide. But what we agreed to  
24 was simply to acknowledge our responsibility as a buyer under  
25 law, and that's what we're doing.

1                   As a practical matter, I think most of the amounts  
2                   that Mr. Leff has claimed, as I understand listening to this,  
3                   involve work that will be done on the two properties --

4                   THE COURT: Well, all of those so far.

5                   MR. HIRD: -- and is work that we intend to be doing.

6                   But Mr. Leff has now said oh, guess what, we've discovered this  
7                   huge offsite problem at Lockport that made some -- may not be  
8                   related. There's no ongoing pollution. That's not ours.

9                   THE COURT: Okay.

10                  MR. HIRD: And that was never ours under the original  
11                  proposal.

12                  THE COURT: Okay.

13                  I have a question for the debtors. It does seem to me  
14                  that this claim objection has morphed into a, in essence, a  
15                  declaratory judgment action about the meaning of my order. As  
16                  a claim objection, I have a lot of sympathy with the DEC.  
17                  There's no release of the debtors by the DEC. The debtors, I  
18                  think, under their theory, or -- and the DEC, I think,  
19                  acknowledges this, are not the first pocket that the DEC would  
20                  look to.

21                  But as a claim objection, why should the claim be  
22                  disallowed at this point? I mean, even if I rule that I accept  
23                  the debtors' argument and the DEC's argument that there was a  
24                  reason why there was a second paragraph in paragraph 63 and it  
25                  wasn't just belt-and-suspenders or surplusage, or however you

1 want to phrase it, it's certainly conceivable that GM  
2 Components would default in the future or continue to fight it,  
3 and at which point why wouldn't the debtor be liable under  
4 those circumstances?

5 MR. BERLIN: Well, I think for two reasons, Your  
6 Honor. One, of course, it strikes us this is a standard  
7 contingent claim. I mean, it is possible, I suppose, that ten,  
8 twenty years from now GM might fail somewhere down the line,  
9 but what could be a more standard contingent claim. GM is  
10 taking a hundred percent of the liability. The only time we  
11 have liability is if GM can't perform under that a long way  
12 down the line, and that's something that is a standard  
13 contingent claim.

14 THE COURT: All right, but they're not asking you to  
15 reserve anything for it. I mean, it's just there. I mean, it  
16 may -- you may never have to pay anything.

17 MR. BERLIN: Well, I understand that, but, again, we  
18 would --

19 THE COURT: It's like --

20 MR. BERLIN: -- we would like a discharge again as a  
21 standard contingent claim in that circumstance. And we  
22 obviously all hope GM is around and prospers and becomes a  
23 national champion, but --

24 THE COURT: But it's not a 502(e) claim, is it? It's  
25 just an unliquidated claim? And I'm not even sure it's

1 contingent in the sense that they're -- they want to look to  
2 the people who are on top of the property at this point. I  
3 mean, it makes sense for the DEC to do that, but I'm not even  
4 sure it's even secondary.

5 MR. BERLIN: Well, also, the -- also, though, their  
6 claim becomes, of course, an unsecured claim. It's not -- we  
7 don't think it's an administrative claim.

8 THE COURT: But that's a separate issue.

9 MR. BERLIN: Yeah.

10 THE COURT: I mean, we haven't really dealt with that  
11 issue. But --

12 MR. BERLIN: But, again, as an unsecured claim, it  
13 strikes us a standard unsecured claim that should be discharged  
14 at this stage as contingent because there's -- you know, there  
15 is another party that's fully responsible for this going  
16 forward for at least an indefinite period of time on this.

17 THE COURT: Well, even if I would rule in your favor,  
18 if in fact GE defaulted or -- I'm sorry, GM defaulted or it was  
19 ultimately determined that they didn't have to pay, I'd  
20 certainly be amenable to a 502(j) motion for reconsideration.  
21 I mean, that'd be a slam-dunk on their part.

22 MR. BERLIN: Well, I don't think that if it's  
23 determined they don't have to pay, if it ever gets to this --  
24 because what we're really saying is that GM took over whatever  
25 liability we have. There may be a dispute, for example, on the

1       offsite liability, did it come from this facility, but if GM  
2       wins on that, we would not pick up that liability. That would  
3       be --

4           THE COURT: Right.

5           MR. BERLIN: -- somebody else's liability.

6           THE COURT: Okay.

7           MR. BERLIN: So the only way that GM would get out of  
8       this is if in fact they default and can't pay any more going  
9       forward. There's no other issue there that relates to that.

10          THE COURT: Right.

11          MR. BERLIN: And, obviously -- yeah, and I'd say we're  
12       probably okay with 502(j) if we had to do that. So that's  
13       not -- we could go on that. And the most important thing in  
14       this hearing is getting a determination that GM has taken over  
15       full liability of the cleanup of the site, from our  
16       standpoint --

17          THE COURT: Okay.

18          MR. BERLIN: -- both on- and offsite.

19          THE COURT: All right.

20          MR. BERLIN: And just one last point, if I can, Your  
21       Honor. As far as GM's own proceeding goes, as you pointed out,  
22       we of course knew about GM's own proceeding at the time, and  
23       that's the whole reason we negotiated this provision, because  
24       we're not contesting that the decision there was wrong; just  
25       that GM agreed to something differently in this context in

1 order to get this claim -- in order to get their deal closed  
2 and to get this plan approved.

3 THE COURT: It -- okay, there are two issues I want to  
4 raise: One is a procedural issue; the other is -- I'd like  
5 both your view and the state's view on GM's interpretation of  
6 the phrase "investigation and remediation of the two  
7 facilities", whether that by its terms means -- leaving aside  
8 anything else about the context of this or, you know, whether  
9 it was just belt-and-suspenders, GM's view or your view,  
10 whether that phrase itself limits GM's responsibility to taking  
11 action within the bounds of the two facilities and not outside  
12 of them.

13 MR. BERLIN: Well, I've been doing this for thirty  
14 years; I've never really seen that argument made before. I  
15 think if you -- once you agree to remediate a facility, and  
16 every facility is identified by location or by something like  
17 that, you agree to do the cleanup and remediation required to  
18 deal with the contamination there to prevent, as Mr. Leff said,  
19 a threat to human health and safety.

20 And just think about it this way, Your Honor: Suppose  
21 we had the address of the facility, and suppose 300 yards away  
22 from the facility offsite there's a drinking water supply.  
23 Under GM's interpretation, remediation doesn't mean they have  
24 to deal with the threat to the drinking water supply.

25 THE COURT: Well, no, that's -- I don't think that's

1 right. What he's saying is that he has to stop any leaching  
2 over there that's ongoing, but he doesn't have to clean up --  
3 you know, he's no different than someone that's a hundred miles  
4 away.

5 MR. BERLIN: Right.

6 THE COURT: He doesn't have to clean up what someone  
7 else caused before he bought the company.

8 MR. BERLIN: Well, no, no, it's not cleaning up what  
9 somebody else caused. What I'm saying is that even if you stop  
10 the contamination from your own property, if the adjacent  
11 property is contaminated as a result of the release from your  
12 property it's a hundred percent standard practice to say you've  
13 got to clean that up as the property owner, because, as I said,  
14 otherwise you have a situation where there's nobody  
15 responsible. You know, you basically caused the contamination  
16 on the adjacent property and you're refusing to clean it and  
17 you're saying that when we gave the remediation order we were  
18 not intending that you had to deal with all the contamination  
19 that resulted from your plume or your contamination.

20 The way groundwater works is there's a plume in the  
21 ground that spreads out, and once it gets off your property  
22 that doesn't mean you no longer have responsibility for what  
23 has already left your property; that's what we're talking about  
24 now. It doesn't say you don't have that responsibility. That  
25 would make no sense from a public health and safety standpoint.

1 I've never seen it interpreted that way.

2 There are some provisions, for example, in the  
3 Brownfield volunteer program, where in a specific program the  
4 state is saying because of your special status you only have a  
5 limited requirement to do cleanup. But that's not -- when an  
6 address is given, an order is given for cleanup at a location,  
7 it always applies to the contamination resulting from that  
8 site, wherever that contamination is, whether it's onsite or  
9 offsite.

10 THE COURT: Okay.

11 Does the DEC have a few (sic) on that point?

12 MR. LEFF: Yes, we do. First, in response to your  
13 immediate question, if the owner of the property qualified as a  
14 volunteer under the Brownfield cleanup program, it would have  
15 limited offsite cleanup responsibility. And the scenario Mr.  
16 Hird described of past contamination caused before that owner  
17 became the owner, that would in fact not be the cleanup  
18 responsibility of the current owner.

19 But we negotiated a different commitment in this  
20 order. We got a plenary commitment to investigate and  
21 remediate the property. And with respect to your earlier  
22 question, Your Honor --

23 THE COURT: And, I'm sorry, does that -- you're  
24 saying, in common environmental enforcement parlance, that  
25 means not only within the property's boundaries but

1 contamination caused, whether past or present, outside of the  
2 boundaries? That's the common view of remediation of a  
3 property?

4 MR. LEFF: Certainly.

5 THE COURT: Okay.

6 MR. LEFF: Every -- Mr. Hird talked about designations  
7 of multiple properties, perhaps contiguous properties, as a  
8 single site. This is an extremely unusual occurrence. He  
9 mentioned the Love Canal. I litigated the Love Canal for many  
10 years. Love Canal was a discrete landfill, but when the  
11 contamination flowed outside of that property into the creeks  
12 and ultimately Niagara River, Hooker Chemical was responsible  
13 for the entire remediation.

14 He also said earlier that the site code description  
15 was determinative and restrictive. This is --

16 THE COURT: You don't need to cover that one.

17 MR. LEFF: Okay.

18 MR. BERLIN: And I just might add one thing. In the  
19 volunteer program, the limitation that results from the  
20 volunteer program is not because of the use of the words  
21 "remediation" and "investigation". That's just a specific  
22 limit in the program for various reasons that New York has put  
23 in -- into that program, and it has nothing to do with the use  
24 of the words "remediation" and "investigation".

25 THE COURT: Okay.

1                   So this is my procedural question. This came up in  
2                   the context of a two-party dispute between DPH and the DEC as  
3                   to the allowance or disallowance of DEC's claim. GM asked for  
4                   an adjournment so that -- because they were concerned,  
5                   notwithstanding that they're not a party to this dispute, that  
6                   my ruling might be binding on them based on the basis for the  
7                   debtors' objection to DEC's claim. But they've done more than  
8                   that. I mean, they've now appeared and argued the merits to  
9                   me. It seems to me that, given that fact, I can decide, in a  
10                  way that is binding on GM, at least the outer parameters of my  
11                  order. I mean, is there a dispute about that at this point?

12                  MR. BERLIN: No.

13                  MR. HIRD: Your Honor, what we did say is that you can  
14                  decide whether we took something other than what we would have  
15                  as a buyer.

16                  THE COURT: Okay.

17                  MR. HIRD: We don't think we did. We think we just  
18                  did that --

19                  THE COURT: No, I understand that point.

20                  MR. HIRD: -- or you can decide that. Just one point,  
21                  if I may, because Mr. Leff actually proved my point at one  
22                  point by saying that a purchaser would have only limited  
23                  offsite liability and responsibility at the end of the  
24                  facility -- when GM saw the site codes, the addresses and the  
25                  language "acknowledge as a buyer", all of that said to them --

1 and they're very knowledgeable about the New York program.  
2 What he's asking us to say is we would have the responsibility  
3 of a buyer, and that's what we agreed to do. And we thought  
4 that would be something that would provide some comfort. We  
5 did not think we were getting anything -- taking on anything  
6 that we would not have in that code.

7 THE COURT: But that -- to me, that's just arguing  
8 that they made a mistake. But there wasn't a mutual mistake.  
9 I mean, how do -- I'm still having a hard time seeing that in  
10 the language. And there's certainly -- the other two parties  
11 to this are telling me that's not their view. So it was at  
12 most a unilateral mistake as opposed to a mutual mistake.

13 MR. LEFF: Certainly when we used the phrase "as  
14 buyer", we had no intention of loading into that one two-letter  
15 word "as" the entire provision that this means the owner is  
16 limited in its offsite obligations. We had no such intention.

17 MR. HIRD: Your Honor, with regard to their last  
18 statement and Mr. Leff's response, he has pointed out that  
19 they -- he was the draftsman of this language; so if there's  
20 ambiguity, that should be read against the state. We did not  
21 understand it the way we saw the language "as buyer". We did  
22 not see the word "assumed", which was the language that Mr.  
23 Leff was insisting in his objection.

24 I don't understand; if he really wanted us to assume  
25 all this obligation, why didn't he -- and thought we did, why

1 he did not use the word "assumed".

2 MR. BERLIN: Well, Your Honor, the whole purpose of  
3 this provision was to expand the liability of a buyer. I mean,  
4 we all knew that GM had the liability of a buyer.

5 THE COURT: No, we're covering old ground here.

6 MR. BERLIN: Yeah, okay, good. Okay, thank you, Your  
7 Honor.

8 THE COURT: There's a -- one wrinkle to the procedural  
9 aspect that I just raised, and I appreciate everyone's candor  
10 in the response to that question. We've spent some time on --  
11 well, let me spell it out. I can see a result here where I  
12 conclude that GM did agree to take on more liability than it  
13 had already taken on in paragraph 9.38 of the purchase  
14 agreement or in paragraph 63(ii)(1) of the order when it also  
15 took on paragraph 2 of that -- subparagraph of that order.

16 That still, frankly, does leave open in my mind what  
17 it was that GM took on in addition to its liability as a buyer,  
18 and that's because of the point that GM's counsel made that  
19 when one is responsible for conducting investigation and  
20 remediation of the -- of these two facilities, arguably it's  
21 only within the facilities, particularly given that they  
22 weren't there to begin with.

23 So I say that in particular because, having issued the  
24 order and appreciating the context of the order, it's easy for  
25 me, I think, or relatively easy for me, to reach the conclusion

1       that GM took on more than what it had already taken on in the  
2 master disposition agreement with regard to these facilities.  
3       Having said that, I don't have any particular expertise based  
4 on my understanding of this case as to what was meant by  
5 "investigation and remediation of the two facilities". That,  
6 to me, is either a term of art or it isn't, and I'm not quite  
7 sure what it means ultimately or what the parties meant.

8           So it's conceivable to me that I can rule on the first  
9 point and not the second point at this point and have, you  
10 know, further evidence or briefing on what remediation of a  
11 facility means.

12           Do you have any thoughts on that?

13           MR. BERLIN: Well, you know, again, I have to say I  
14 would look at it as sort of, in a way, an artificial issue  
15 created by GM, sort of out of whole cloth, because I'm not sure  
16 there's any real basis I've seen anywhere to put that  
17 limitation on -- nor have I seen it used that way. We --  
18 certainly nobody thought about it at the time of the  
19 negotiations. The word "offsite", for example, is never used  
20 in these documents. I don't think it's used even in any of the  
21 e-mails going forward.

22           THE COURT: Although -- no, it was used in the  
23 e-mails, I think. I'm pretty sure it was used --

24           MS. MALONE: Yep.

25           THE COURT: -- in the e-mails.

1 MR. BERLIN: It was in the e-mails, okay.

2 MS. MALONE: It was in Berz's.

3 THE COURT: Yeah.

4 MR. BERLIN: Yeah, it -- okay, in one of the e-mails.

5 Sorry.

6 THE COURT: Yeah.

7 MR. BERLIN: But, again, we'd be happy to brief it, if  
8 you'd like, Your Honor. And then we do mention a couple of  
9 cases in our brief where in fact the courts -- in paragraph 11  
10 of our submission to you, where the courts do list and say that  
11 the use the word "facility" is broad enough to include all of  
12 the adjacent contamination. I don't think you see that very  
13 often, because it's extremely unusual for somebody to challenge  
14 that point and raise that as an issue.

15 THE COURT: Right.

16 MR. LEFF: Your Honor, you've heard our position on  
17 what the phrase means, but the bifurcation, as I understand it,  
18 is consistent with the state's position here that the  
19 unresolved issue should rather be decided in a state court.

20 MR. BERLIN: Well, I don't think it's a state court  
21 issue. This is a question of what we meant by the language in  
22 the agreement, not by what the --

23 THE COURT: I think that's --

24 MR. BERLIN: -- cleanup responsibilities are.

25 THE COURT: Yeah, I'm not sure I understand your point

1       on that point (sic), because it does seem to me this is an  
2       issue of what the parties meant in this provision of the order  
3       as opposed to what someone's responsibilities would be under  
4       state law.

5                   MR. HIRD: Your Honor, we agree with both the debtor  
6       and you that the question of the meaning of these terms is an  
7       issue for this Court because it's an issue of the meaning of  
8       the Court's order. And if further briefing on the issue would  
9       be helpful to -- in order for you to understand our position,  
10      we think, in the context of this whole document, of this whole  
11      phrase, the entire paragraph where it refers to the site codes  
12      and the site addresses, it was clearly intended to deal with  
13      the remediation and investigation of the property within those  
14      addresses and referred to within the site codes, which did not  
15      include any offsite contamination at the Lockport facility.

16                  MR. BERLIN: Well, Your Honor, I would assume the  
17      question you're asking is not, again, what we mean by the  
18      result of the negotiations. I thought you were asking the  
19      question of should there be additional briefing on what it  
20      generally meant by term --

21                  THE COURT: Right.

22                  MR. BERLIN: -- "remediation and investigation".

23                  THE COURT: That's all I meant

24                  MR. BERLIN: That's a different question. We wouldn't  
25      go back through all the details we're talking about here; it

1       would just be a straight briefing on what those two terms mean  
2       in common practice.

3                     (Pause)

4                     THE COURT: I mean, the objection by New York that  
5       prompted this whole issue, to my mind, certainly raised the  
6       possibility of offsite responsibility and referred to  
7       remedia -- completing the remedial work at the sites. I mean,  
8       that's the phrase they use in paragraph 9, "complete the  
9       remedial work at those sites". But, you know, it's talking --  
10      the contaminants identified in the objection are things that  
11      clearly migrate, so it's hard for me to see that that wasn't  
12      contemplated.

13                  All right, I have before me, under the claim  
14      liquidation procedures orders that I've entered in this case,  
15      the objection by DPH Holdings Corporation to two proofs of  
16      claim, that include priority and administrative claims, filed  
17      by the New York State Department of Environmental Conservation,  
18      "New York DEC", in the Chapter 11 case of In re Delphi  
19      Corporation. DPH Holdings is the successor for purposes of  
20      claim objections to Delphi.

21                  The two claims asserted by the New York DEC cover,  
22      respectively, a former Delphi site, or DAS automotive site, in  
23      Rochester called the Rochester site, and a site called the  
24      Lockport site, again, a former system -- I'm sorry, a facility  
25      run by Delphi Thermal Systems in Lockport, New York. The

1 claims are in both liquidated and unliquidated amounts, and the  
2 basis for DPH's objection to each claim is that, based upon  
3 this Court's Order Approving Modifications, under 11 U.S.C.  
4 Section 1127, to the First Amended Joint Plan of Reorganization  
5 of Delphi Corporation and Certain Affiliates, Debtors and  
6 Debtors-in-Possession, dated July 30, 2009, the responsibility  
7 for performing the future cleanup of the sites, that is, for  
8 the unliquidated portions of the two claims, belongs to GM  
9 Components Holdings, LLC.

10 The New York DEC acknowledges that it would like to  
11 look to GM Components, LLC to be primarily responsible for the  
12 future cleanup but that, because GM Components has disclaimed  
13 responsibility for at least a portion of that cleanup, its  
14 claim should not be disallowed. I note that the obligation of  
15 DAS and Delphi Thermal Systems, in respect of any cleanup claim  
16 at the Rochester or Lockport facilities -- or sites, was never  
17 released by the DEC, and, therefore, the liability, leaving  
18 aside whether it's an administrative or priority or an  
19 unsecured pre-petition liability, does continue to exist on a  
20 contingent basis even if, as both the DEC and DPH insist, GM  
21 Components in fact took on the responsibility for the future  
22 cleanup.

23 Because of the central importance of the contention  
24 that GM had agreed to take on this cleanup liability, GM sought  
25 an adjournment of the hearing on the claim objection and has

1 filed a statement and a reply statement in which it contends  
2 that, other than an obligation as a new owner of these two  
3 sites, it has no other obligation to New York State for  
4 environmental liability and, consequently, at least some  
5 foreseeable portion of the DEC's two claims are not its  
6 responsibility and would fall directly on the debtor. Under  
7 those circumstances, I believe that issue is squarely before  
8 me, including with respect to my determination of the claim  
9 objection being binding not only on the DEC and DPH but also on  
10 GM Components Holdings.

11 The assertion by DPH, in which the New York DEC joins,  
12 is that, pursuant to paragraph 63(ii)(2), GM Components  
13 acknowledged that it shall be responsible for conducting  
14 investigation and remediation of the Rochester facility and the  
15 Lockport facility in accordance with applicable environmental  
16 laws. Both DPH and the DEC contend that that undertaking by GM  
17 Components was made in response to an objection to the proposed  
18 Plan modification filed on July 14th by New York State DEC in  
19 which it contended that I should not approve and modify the  
20 Plan or the Master Disposition Agreement pursuant to which GM  
21 Components Holdings, LLC would acquire the Rochester site and  
22 the Lockport facility, without requiring GM Components to  
23 confirm the obligation on the part of the proposed buyer to  
24 complete the remedial work at those sites.

25 Paragraph 9 of the New York DEC's objection went on to

1 state, quote, "The MDA should be amended to state explicitly  
2 that the obligation to clean up the Rochester site and the  
3 Lockport facility will be assumed by the buyers of those sites,  
4 including GM Components Holdings, LLC."

5 As I said, both DPH and the DEC assert that, in fact,  
6 that was the effect of paragraph 63(ii)(2) of my order. GM  
7 takes a contrary position. It asserts that sub paragraph 2 of  
8 my order only represented an acknowledgment by it as the buyer  
9 that it would be responsible for investigation and remediation  
10 at the two facilities in accordance with applicable  
11 environmental law in its capacity as a buyer; that is, without  
12 any additional obligation or responsibility to continue  
13 investigation and remediation, or to be responsible for  
14 investigation or remediation that only the seller would be  
15 responsible for.

16 I conclude, based on the plain language of my order,  
17 which, with regard to the applicable paragraphs at issue, is a  
18 consent order and therefore should be interpreted like a  
19 contract under New York law to -- in an way that is consistent  
20 with the parties' intentions, that the plain meaning of the  
21 order is in accordance with DPH and the DEC's interpretation of  
22 it. I say that primarily in light of the context of the  
23 paragraph that I have been quoting, both in terms of the  
24 litigation -- pending litigation that it resolved as well as  
25 the applicable provisions of the MDA and the Plan Modification

1 Order that relate to paragraph 62 -- I'm sorry, 63(ii)(2).

2 First, it is clear from the July 14th, 2009 New York  
3 State DEC objection that the DEC was referring to the two sites  
4 in toto; secondly, that it was referring to cleanup obligations  
5 with regard to those two sites, comprehensively, under  
6 applicable environmental laws; third, it is, I believe, clear,  
7 based on the types of contaminants referred to in the DEC's  
8 July 14, 2009 objection, that there was a distinct possibility,  
9 if not a probability, that contamination emanating from the  
10 site had spread beyond the site -- or the sites, and that such  
11 contamination was within the contemplation of the cleanup  
12 remedial work that the DEC wanted to have GM Components confirm  
13 was going to be the responsibility going forward of GM  
14 Components. And it is primarily the offsite contamination that  
15 GM Components says it has not assumed any responsibility for.

16 Secondly, GM Components points out that the issue of a  
17 buyer such as GM Components taking free and clear of past  
18 environmental remediation responsibilities of its seller had  
19 very recently been ruled upon by Judge Gerber in GM's own  
20 bankruptcy case, in a ruling dated July 5th, 2009 against,  
21 among others, the New York DEC. I view the relevance of this  
22 ruling 180 degrees differently than GM does. GM asserts that  
23 based on that ruling it did not have to give the New York DEC  
24 anything other than what it had already given the New York DEC  
25 in paragraph 9.38 of the Master Disposition Agreement, which is

1 a statement, quote, "Nothing in this Agreement is intended to  
2 nullify any liability to any federal, state or local  
3 environmental agency under environmental laws that either  
4 Seller and/or their Affiliates or any Buyer may have as a  
5 result of their status as an owner or operator of any property  
6 or facility, or as an arranger for disposal of any hazardous  
7 materials generated at any property or facility." That is, GM  
8 has taken the position that, because of Judge Gerber's July 5th  
9 ruling, it could have thumbed its nose at the DEC with respect  
10 to obligations that were solely pre-closing seller obligations,  
11 while of course affirming, as Judge Gerber required in his  
12 ruling, that ongoing obligations, of course, would be taken on  
13 by the new buyer, GM Components. See *In re General Motors*  
14 Corp.

15 B.R. 463, 507-08 (Bankr. S.D.N.Y. 2009).  
16 Therefore, GM contends, paragraph 63(ii)(2) was merely  
17 belt-and-suspenders, or ice in winter, or whatever cliche you  
18 want to give to a meaningless concession, or whatever cliche  
19 you want to use to describe a meaningless concession. GM also  
20 argues that it is perfectly consistent with paragraph 9.38 that  
21 I've just quoted from the MDA, and should be read in harmony  
22 with it as opposed to being construed as the undertaking of a  
23 new and broader obligation.

24 I, however, do not see it that way. First of all, it  
25 is clear from the Plan Modification Order that it was intended  
specifically that, notwithstanding any other provision of the

1 MDA or the order (and that would include the provision in the  
2 same paragraph of the order which says "The provisions of the  
3 Modified Plan, this Order and the Confirmation Order shall be  
4 construed in a manner consistent with each other so as to  
5 effect the purposes of each"), again, notwithstanding any of  
6 the MDA or this order, including that language that I just  
7 quoted, "paragraph 63 of this order shall govern the provisions  
8 of the Master Disposition Agreement in all respects." That is,  
9 as stated in paragraph 3 of the Plan Modification Order, which  
10 I just quoted, it was intended that paragraph 63 would do  
11 something other than or over or in addition to the MDA,  
12 including paragraph 9.38's recitation of the buyer's ongoing  
13 liability as an owner under the environmental laws.

14 Paragraph 63 is entitled "Resolution of Modified Plan  
15 Objections". Subparagraph (ii) is headed "New York Department  
16 of Environmental Conservation and Michigan Department of  
17 Environmental Quality," obviously a reference to their two  
18 objections and the solution to them. Paragraph 1 of (ii),  
19 paragraph 63, in essence repeats paragraph 9.38 of the MDA:  
20 i.e., "Nothing in this Order or the Master Disposition  
21 Agreement releases, nullifies or enjoins the enforcement of any  
22 liability to a governmental unit under Environmental Laws (as  
23 the term is defined in the Master Disposition Agreement) or  
24 regulations or any associated liabilities for penalties,  
25 damages, cost, recovery or injunctive relief that the buyers

1 would be subject to as the owner, lessor or operator of  
2 property after the date of entry of this Order."

3 In addition to that paragraph, however, the parties  
4 added paragraph 2, which is the basis for DPH and the DEC's  
5 contention that GM assumed something more than what was set  
6 forth in paragraph 9.38 of the MDA. It states, again, "GM  
7 Components, as buyer of the Delphi Automotive Systems site  
8 located at 1000 Lexington Avenue, Rochester, New York,  
9 identified in the New York State Department of Environmental  
10 Conservation ('NYSDEC') Environmental Site Remediation Database  
11 as Site Code 828064 (the 'Rochester Facility'), and the Delphi  
12 Thermal Systems facility located at 200 Upper Mountain,  
13 Lockport, New York, identified in the NYSDEC Environmental Site  
14 Remediation Database as Site Codes C932138, C932139, C932140  
15 and 932113 and the NYSDEC Spill Incidents Database as Site Code  
16 065121 (collectively 'Lockport Facility'), acknowledges that it  
17 shall be responsible for conducting investigation and  
18 remediation of the Rochester Facility and the Lockport Facility  
19 in accordance with applicable environmental laws."

20 Again, GM Components contends that this paragraph,  
21 because it uses the phrase "as buyer" in the first clause and  
22 states - acknowledges, that it shall be responsible as opposed  
23 to assumes responsibility for, is, in essence, a simple  
24 reformulation in the positive, as opposed to a statement in the  
25 negative, of paragraph 1 of subparagraph (ii) as well as

1 paragraph 9.38 of the MDA.

2 I believe that in context that simply cannot be the  
3 case. I say that, first, in light of the general interpretive  
4 maxim that every provision of an agreement should be read so  
5 that it's not rendered superfluous. I'm always somewhat wary  
6 of interpretive maxims, however, given that there's almost  
7 always a maxim, that could be held up for a contrary  
8 proposition. However, here, in this context, it appears to me  
9 clear that the DEC was looking for something more than what  
10 already existed in the MDA, and, in particular, was looking for  
11 an acknowledgment by GM that it would be responsible not only  
12 as the new owner but also for, with regard to these two  
13 facilities, remediation that was before the sale the  
14 responsibility of Delphi.

15 If it believed, as I have to assume that it believed,  
16 that this paragraph did the trick on that point, it seems to me  
17 that it was incumbent upon GM to make it clear that it did not  
18 do so; i.e., to spell that fact out as opposed to submitting an  
19 additional provision that on its face appears to acknowledge  
20 additional responsibility, particularly in the context of  
21 resolving the DEC's objection.

22 I believe that context is also consistent with the  
23 fact that Judge Gerber had already ruled that in a contested  
24 setting the DEC could be forced to back down from its position  
25 or that its position would be overruled by the Court. Instead

1 of doing that, this consent order was entered into, which I  
2 view as, again, acceding to the DEC's position rather than  
3 contesting it, which could have been done by either the  
4 litigation route, relying on Judge Gerber's opinion of only a  
5 couple of weeks before, or spelling out clearly in this  
6 paragraph what GM Components was not taking on.

7 I also believe that subparagraph (3), which states  
8 that "GM Components and NYSDEC shall confer in good faith to  
9 identify the remaining investigation and remediation required,  
10 under applicable environmental laws, for the Rochester and  
11 Lockport Facilities," contemplates a continuum, not a new  
12 starting point with the closing of the MDA but, rather,  
13 conferring in good faith, identifying what work needs still to  
14 be done in light of the past investigation and remediation.

15 So, in light of that reading, I conclude that, in  
16 fact, paragraph 2 was intended, based on its plain meaning and  
17 the context of the order as a whole and the MDA, under which GM  
18 took on an additional obligation in addition to its owner  
19 obligation under the MDA and paragraph 62 -- I'm sorry,  
20 63(ii)(1), as well as its obligation under applicable law,  
21 i.e., Judge Gerber's opinion, and that, therefore, it is  
22 obligated to be responsible for conducting investigation and  
23 remediation of the Rochester facility and the Lockport facility  
24 in accordance with applicable environmental laws, not only as  
25 the new owner but also in the continuum of the existing

1 investigations and remediations that were owed to the DEC by  
2 the debtors.

3 The paragraph that the DEC and the debtors rely upon  
4 identifies the sites not only by their addresses but also by  
5 remediation database site codes, and uses the defined terms,  
6 the applicable defined terms, following those site codes. GM  
7 Components has argued that if it was obligated to take on  
8 debtor liability as well as its own owner liability under this  
9 provision, it only had to do so in respect of those site code  
10 areas. I'm satisfied, based on the language of paragraph 2,  
11 that -- and the representations made to me by counsel for the  
12 DEC, that the site code numbers are not limiting in that  
13 fashion but rather are additional identifiers, as far as DEC is  
14 concerned, for any problems that may be at the two addressed  
15 locations.

16 That leaves the issue of what the parties meant by  
17 being responsible for conducting "investigation and  
18 remediation" of the facilities. GM contends that the phrase  
19 "of the facilities" means only within the boundaries of those  
20 facilities. This issue may well arise because of the  
21 contention by the DEC that offsite contamination was caused by  
22 past releases at the facilities, which, I believe, was  
23 reasonably contemplatable at the time and, in fact, based on  
24 the exhibits attached to GM's statements in response to the  
25 claim objection, was contemplated by GM as a possibility. I

1 believe that the phrase "remediation of the facility" would  
2 include the, at least under some circumstances, the offsite  
3 cleanup. The extent of that inclusion, I think, is properly  
4 left to another day when the facts of the cleanup are better  
5 known. But I believe that the parties did contemplate that  
6 whatever remediation Delphi was responsible for pre-closing  
7 with regard to these facilities -- or of these facilities,  
8 would be assumed and taken on by GM Components in this  
9 paragraph.

10 What Delphi would be responsible for, since the DEC  
11 has not yet liquidated that amount or the basis for that  
12 responsibility, remains to be seen, but I believe that the  
13 agreement here was that Components would take on that  
14 responsibility in the first instance. I say that with regard  
15 to not knowing exactly what would be encompassed by Delphi's  
16 responsibility, notwithstanding the debtors' citation to cases  
17 under CERCLA which contemplate offsite contamination being  
18 within the definition of a facility. But, again, it's not  
19 clear to me whether all the environmental laws are treated that  
20 way. See City of Tulsa v. Tyson Foods, Inc.,  
21 258 F.Supp.2d 1263 (N.D.Oklahoma 2003) (vacated on other grounds),  
22 as well as United States v. Vertac Chemical Corporation,  
23 364 F.Supp.2d 941 (E.D.Ark. 2005).

24 However, to the extent that Delphi would be obligated,  
25 in respect of those two facilities, to engage in remediation, I

1 believe that paragraph 2 represents GM Components' undertaking  
2 to be responsible for such cleanup and remediation.

3 So, based upon all the foregoing, it appears to me  
4 that the claim of the New York DEC is unliquidated, and, at  
5 this point contingent, based upon a number of factors,  
6 including GM's refusal, notwithstanding my finding as to the  
7 meaning of paragraph 63 of the Plan Modification Order, to pay  
8 and perform its obligations. Therefore, I believe that the  
9 claim should be disallowed, subject, however, to  
10 reconsideration under Section 502(j) in the event that GM,  
11 notwithstanding my ruling and facts that would require GM to  
12 perform, either refuses or is unable to perform. As I made  
13 clear during oral argument, if that occurred, I believe that  
14 the reconsideration of the claim would be a given under 502(j),  
15 although of course the debtors have preserved their right to  
16 dispute the priority of the claim and, of course, the amount.

17 So the debtors should submit an order consistent with  
18 my ruling. You don't need to settle it on the parties, but you  
19 should certainly circulate it to them before you e-mail it to  
20 chambers.

21 MR. LYONS: Your Honor, the remaining matters -- I do  
22 not believe anybody is here on the other side.

23 THE COURT: Let me -- you can be --

24 MR. LYONS: I'm sorry.

25 THE COURT: Unless you -- I don't know if you're

1 rising to ask to be excused or if you have a question.

2 UNIDENTIFIED SPEAKER: It's procedural.

3 MR. HIRD: No, procedural question, Your Honor.

4 THE COURT: Okay.

5 MR. HIRD: Obviously, GM Components will want to  
6 consider appealing this order. I want to understand that the  
7 order will not be deemed order until that draft --

8 THE COURT: Oh, it's not entered until it's entered.

9 MR. HIRD: Until it's entered. And the Court would  
10 view that as a final order, which we would be --

11 THE COURT: It's a claim objection order, so I believe  
12 it would be final --

13 MR. HIRD: Yeah.

14 THE COURT: -- although that's for the appellate court  
15 to decide, I guess. But --

16 MR. HIRD: Thank you, Your Honor.

17 THE COURT: Yeah. I don't see why it wouldn't be  
18 viewed as final. It's a claim objection order.

19 MS. REED: Your Honor, this is Margery --

20 THE COURT: As I -- let me -- before we get on to  
21 them, as I often do with long bench rulings, I might go over  
22 the transcript and, in addition to correcting typos, might  
23 decide that I should have said something better. If I do  
24 change the transcript as opposed to correcting it, I'll attach  
25 that modified ruling to the order or file it on the docket, and

1           that will be my ruling. It's not the transcript that's my  
2           ruling.

3           MR. HIRD: Thank you, Your Honor.

4           THE COURT: Okay. Thank you. And you can certainly  
5           be excused.

6           UNIDENTIFIED SPEAKER: Thank you, Your Honor.

7           THE COURT: Okay.

8           Okay, another number of other contested claim  
9           objections.

10          MR. LYONS: Yes, Your Honor, and I'm hoping we can  
11          move through these rather rapidly.

12          THE COURT: Okay.

13          MR. LYONS: I do not believe anyone has appeared in  
14          person or on the phone with respect to the other matters, and  
15          there have only been two responses filed relating to two of the  
16          claims.

17          THE COURT: Okay. There's no one on the phone and  
18          there's no one here in opposition, but I have read --

19          MS. REED: Your Honor, this is --

20          THE COURT: Oh, I'm sorry, maybe there is someone on  
21          the phone.

22          MS. REED: I'm sorry, this is Marjorie Reed. I'm  
23          participating telephonically. But for --

24          THE COURT: On behalf of whom?

25          MS. REED: On behalf of the ACE Companies with respect

1 to a matter -- I believe it's number 19, which is stipulation  
2 and agreed order.

3 THE COURT: Oh. Oh, I'm sorry. We're -- that's a  
4 decreed order. That will get entered.

5 MR. LYONS: Right.

6 MS. REED: I was participating to see if the  
7 stipulation has been submitted to the Court, or --

8 THE COURT: It will be. If it hasn't been, it will be  
9 after this hearing. And I will enter it.

10 MS. REED: Okay, thank you, Your Honor. May I be  
11 excused?

12 THE COURT: Absolutely.

13 MS. REED: Thanks very much.

14 THE COURT: Okay.

15 MR. LYONS: Okay, Your Honor, turning to the agenda,  
16 item 26 is the next matter that is up, and that is the claim of  
17 Atul Pasricha. Your Honor, this -- part of our argument was  
18 filed under seal because there is a document that has  
19 confidentiality protections.

20 THE COURT: Right.

21 MR. LYONS: I would think there are one of two ways we  
22 could proceed: Either we could rely entirely on our brief,  
23 which I'm prepared to do for the reasons for disallowing Mr.  
24 Pasricha's claim, and then I don't have to go through any  
25 matters that could be confidential, or perhaps we could seal

1 the hearing and discuss it.

2 THE COURT: Well, I think this claim asserts not just  
3 one type of claim; it asserts, I guess, three types of claims.  
4 I don't see a basis for the indemnification claim being  
5 allowed. There's no liquidation that's covered by 502(e).

6 MR. LYONS: Correct.

7 THE COURT: The -- I believe that the debtors are  
8 correct that the KESIP participation led to the waiver of the  
9 other claims other than, perhaps, the change-in-control claim.  
10 So I think we're just talking about the change-in-control  
11 claim.

12 MR. LYONS: And that is the one that is conclusively  
13 resolved --

14 THE COURT: Right.

15 MR. LYONS: -- in our view, by the confidential  
16 matter.

17 THE COURT: Okay, and leaving aside the confidential  
18 nature of it, what is the debtors' -- do they have any  
19 objection to that change-in-control claim other than the plain  
20 terms of the agreement that's under seal?

21 MR. LYONS: That's the basis for disallowance,  
22 completely, the --

23 THE COURT: Okay. So I think this -- just this  
24 portion of the record, starting now, and I'll say when it's  
25 reopening, it should be treated as being under seal. So the

1 transcriber should separately transcribe this -- the record  
2 from this point to the point where I say we should go back on  
3 the record and the record is unsealed.

4 (Portion under seal transcribed separately)

5 THE COURT: So that -- we should go back on the  
6 record, then, as far as the party transcribing the agreement,  
7 and the record should reflect that I have determined that the  
8 debtors' objection is well taken and that each of the claims  
9 asserted by Mr. Pasricha should be disallowed, including the  
10 change-of-control claim, given that the terms of the -- that  
11 that claim was waived by the agreement under seal.

12 MR. LYONS: Thank you, Your Honor. Item 27 is the  
13 claim of Ronald Jorgensen. Your Honor, this is very similar to  
14 the claim of Mr. Downey at the last hearing. It is a claim  
15 that Your Honor denied for -- on a sufficiency basis to  
16 disallow the claim, because there were some claims of fraud in  
17 connection with the purchase or sale of the security.

18 We're just seeking a finding from Your Honor that it's  
19 subordinated under 510 and thus not entitled to a distribution.

20 THE COURT: It's clearly a claim that arises from the  
21 purchase or sale of a security, as that phrase has been  
22 interpreted in this circuit. The security here is Delphi  
23 common stock. And therefore under the plan, as well as Section  
24 510(b) of the Code, it has the same treatment as common stock  
25 interests, which means that it receives no distribution under

1 the plan.

2 MR. LYONS: Thank you, Your Honor.

3 THE COURT: And that's what the order should say as  
4 opposed to disallowing the claim.

5 MR. LYONS: Correct. Your Honor, the next claim is  
6 Mr. Miller, and that is item 28 on the agenda. Your Honor, you  
7 may recall we left one item open; it was a 37,000 dollar  
8 component of Mr. Miller's claim, and that related to his  
9 assertion that he was owed money under the KESIP plan. From  
10 his proof of claim itself it's clear that he quit on July 22nd.  
11 The AIP order, paragraph 4, says a covered employee who quits  
12 will not be eligible for any incentive compensation payment.

13 The payment came later --

14 THE COURT: Right, I think that there's no --

15 MR. LYONS: -- and I think that's crystal clear.

16 THE COURT: -- there's no prorating under the KESIP,  
17 right? The debtors have never done that?

18 MR. LYONS: No.

19 THE COURT: If someone put it in the middle, they lost  
20 it for that year.

21 MR. LYONS: Correct, and the order actually made that  
22 crystal clear.

23 THE COURT: Okay. I agree with that. So that portion  
24 of Mr. Miller's claim should be disallowed. The other portions  
25 were already dealt with.

1 MR. LYONS: Item 29, Your Honor, the claim of Stanley  
2 D. Smith, Mr. Smith asserts a priority claim for retiree health  
3 benefits. Your Honor, this is along with others who  
4 unfortunately --

5 THE COURT: I have already ruled on this issue.  
6 Regretfully, I believe that, for the reasons I previously  
7 stated, the debtors are permitted to terminate these benefits,  
8 given the nature of the benefits agreements, subject to the  
9 settlements that were reached with the retirees.

10 MR. LYONS: And the next claim, Your Honor, item  
11 number 30 is one filed by James Luecke, L-U-E-C-K-E, for  
12 159,000 dollars. His claim relates to supposed commitment of  
13 the debtors to give him a job transfer. Your Honor, we object  
14 to this on a sufficiency basis because there's nothing in his  
15 claim that details an offer by the debtors. There's no  
16 description as to who, what and where. It just lacks all  
17 specificity to in any way constitute an enforceable obligation  
18 on the part of the debtors. So --

19 THE COURT: This is the one of these that I just  
20 wasn't really sure on. He does have here attached to his claim  
21 a -- complaints filed with the NLRB and some buyout offers.  
22 One of the elements of his claim was a buyout. It's just not  
23 clear to me that the statement that the debtor doesn't owe this  
24 because it's not supported is enough to defeat the claim, given  
25 what was attached to the claim. It's Exhibit 16 in the claim

1 book.

2 First of all, he does say -- I don't know why it  
3 says -- I think it's for -- yeah, I think it's for 96,000  
4 dollars; that's the cap on it. I don't see an amount that's  
5 greater than that. So I would lower it to that amount.

6 MR. LYONS: Yeah, I'm referring to his administrative  
7 expense claim form. It says 159,000.

8 THE COURT: All right, but what's attached to that --  
9 I see that, but what's attached to it only asserts one for  
10 89,000, I mean the backup only asserts 89,000, and I think the  
11 form itself refers to the backup.

12 But there's this Employee Placement for Transfer to  
13 Delphi Locations, and it says a phone number to sign up for  
14 transfer.

15 MR. LYONS: Correct, and I see that, Your Honor, but  
16 this hardly rises to the level of a commitment to provide a  
17 transfer. As a matter of fact, it says a notification would  
18 come by certified mail.

19 You know, our contention, Your Honor, is just that  
20 there isn't any writing here or, frankly, any particulars as to  
21 who gave him, you know, this supposed promise, which, you know,  
22 for 12(b)(6) purposes we need to have some kind of  
23 particularity as to who said what to whom and when. It's just  
24 that the employee placement memo itself doesn't really give any  
25 kind of details. It's frankly just a "If you want to sign up

1 for it, you should call a number," but it does not in any way  
2 indicate any kind of a commitment.

3 (Pause)

4 THE COURT: He also says that there's a violation of  
5 paragraph -- let me read it here -- of the national agreement  
6 about transfers, in his grievance. I have not gone and looked  
7 at the underlying agreement, but he is referring to a specific  
8 provision that, I gather, he says gives him the right to a  
9 transfer, or at least a right to request a transfer.

10 MR. LYONS: You know, for purposes of a sufficient  
11 claim, though, he should at least refer to it or attach or  
12 state what the provision is. You know, certainly no one is  
13 here from the UAW is here to -- as part of Mr. Lu --

14 THE COURT: No, I understand. I guess -- well, he  
15 says paragraph 96 of the national agreement.

16 Now that I took my glasses off, I got to read it.

17 (Pause)

18 THE COURT: I just -- I'm reluctant, given that this  
19 is a pro se individual, and given what he has attached, which  
20 refers to a specific grievance that he filed and this form, to  
21 rule on that on a sufficiency basis, plus which, part of his  
22 claim is for a buyout. Oh, I see, that's why it adds up to  
23 159-. I was reading it as 7,000. It's 70,000.

24 What's the response on the buyout? The 89- is for the  
25 transfer; the 70- is for the buyout, which I read mistakenly as

1       7,000, but it's for 70-. Did he -- is the point that he didn't  
2 take the buyout? That's not what he stated in the objection.  
3 I just think perhaps, like the Miller one, you guys should look  
4 at this a little more.

5           MR. LYONS: Why don't we continue it to the next  
6 hearing, Your Honor, and we'll try to get some more --  
7 paragraph 96 so we can take a look at it and get it clear  
8 answer for Your Honor.

9           THE COURT: Okay. And it's really two issues; one is  
10 did he properly exercise his right to the buyout. Was that  
11 even something that is a claim against Delphi as opposed to GM?  
12 I'm not sure who was pa -- which buyout this was. And then,  
13 secondly, does paragraph 96 say anything about a right to  
14 transfer?

15           I accept that there's no other basis in the claim for  
16 a right to transfer, other than that paragraph -- other than  
17 the collective bargaining agreement. I don't think the notice  
18 suffices without more, without a statement that we accept you.  
19 So, really, the focus would be on the collective bargaining  
20 agreement and on his alleged request for a buyout.

21           MR. LYONS: Okay, we'll take a look at that, Your  
22 Honor, and we'll --

23           THE COURT: Okay.

24           MR. LYONS: -- be back to you next hearing.

25           Next, item 31 is Frank Budelewski. This is a claim,

1 again, for OPEB --

2 THE COURT: Right.

3 MR. LYONS: -- and for disability benefits which were  
4 terminated.

5 THE COURT: And, again, based on the law of the case,  
6 the termination was proper.

7 MR. LYONS: Item number 32 is a claim filed by Walter  
8 A. Kunka. This is a claimant who is seeking to get the full  
9 year accrual vacation pay. He was -- the vacation policy, in  
10 accordance with its terms, was changed by the debtors. He then  
11 voluntarily left employment after that change was in place.  
12 So, Your Honor, I think his claim is without merit. The policy  
13 was changed --

14 THE COURT: Well --

15 MR. LYONS: -- in accordance with its terms.

16 THE COURT: -- I think he's contending that the change  
17 itself was a breach. But there's no contract with him, and the  
18 debtors had the ability to change their vacation policy, so I  
19 don't think there's any claim here. I think the claim itself  
20 acknowledges that the new policy, the one that was in effect  
21 when he left, doesn't provide for accrual. And therefore if  
22 that policy governed, which I find it does, then he's not  
23 entitled to what he's claiming.

24 MR. LYONS: Okay, we will submit orders on that.

25 THE COURT: Yes.

1 MR. LYONS: Item number 33, Gary Cook. This is a  
2 claim for pre-petition workers' compensation. And there were  
3 actually two claims filed: one we actually put in the notice,  
4 and we omitted -- inadvertently omitted a second exact  
5 duplicate claim, and we'd just as soon address both.

6 THE COURT: But they're both admin claims, right?

7 MR. LYONS: Both of them are filed as admin claims.

8 THE COURT: And that's what you're objecting to is the  
9 admin status?

10 MR. LYONS: Correct, and to have --

11 THE COURT: Right, and clearly this -- I mean, by --  
12 on its face, it's a pre-petition injury and therefore it can't  
13 be allowed as an administrative claim.

14 To the extent he's suggesting that the debtor -- I  
15 don't think he is, but to the extent he's suggesting that the  
16 debtors have an obligation to continue on with the health  
17 benefits, that's, again, the law of the case that they don't.

18 MR. LYONS: Okay, then finally, Your Honor, item  
19 number 34, Sharyl Carter. We have been before you on this one  
20 before, and you --

21 THE COURT: Well, you were before me in the context of  
22 the pre-petition claim. Now she's asserting an admin claim, is  
23 that right?

24 MR. LYONS: Yes, Your Honor. There was a whole flurry  
25 of claims --

1 THE COURT: Right.

2 MR. LYONS: -- and it relates to the same subject  
3 matter that you ruled on.

4 THE COURT: I've already ruled on this, and my ruling  
5 was that the district court had already ruled on this and that  
6 the claim is barred by res judicata. So these new claims  
7 should also be disallowed.

8 MR. LYONS: Thank you, Your Honor.

9 THE COURT: Okay.

10 MR. LYONS: I believe that's all we have on our claims  
11 agenda. So thank you, Your Honor, for your --

12 THE COURT: Okay. Thank you.

13 MR. LYONS: -- your time.

14 THE COURT: Okay.

15 (Proceedings concluded at 1:27 PM)

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I, Clara Rubin, certify that the foregoing transcript is a true  
and accurate record of the proceedings.

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6 **Clara Rubin**  
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